

## The Mechanism For Electing The Deputy Prime Minister In The Constitution Of The Republic Of Iraq For The Year 2005 And Similar Constitutions

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**Abstract:** The position of the Prime Minister (PM) in Iraq is the head of the Iraqi government and the Iraqi Council of Ministers and is represented as the direct executive responsible for the general policy of the state and the commander in chief of the Iraqi armed forces. The PM is assigned by the President of the Republic and the candidate of the most numerous parliamentary bloc in the parliamentary systems, as he forms the Council of Ministers within fifteen days from the date of the election of the President of the Republic. The problem of this study lies in the constitutional and legal absence, which takes it upon itself to refer to this important position, and defines its competence and powers. The most important problem of this study, including, the legal and constitutional adaptation to the position of Deputy Prime Minister (DPM), whether at the national, global, and European levels. Besides, whether is the position of the PDM considering a public servant or assigned to public service. Obviously, from imposing the possibility on the Iraqi and international levels of most foreign countries that this problem will have a number of results about this characterization. In this research, the researcher used the analytical method, where the research was dealt with in two topics, introducing the Deputy Prime Minister, and the second topic was devoted to the mechanism of electing the Deputy Prime Minister.

**Keywords:** election, Deputy Prime Minister, powers of the position of Deputy Prime Minister, vacancy of the position of Vice President.

### INTRODUCTION

Deputy Prime Minister (DPM) in some countries, including Iraq and European countries with a representative system, is the government official that holds the responsibilities of the Prime Minister temporarily when he is absent or if he is delegated for a specific event or activity as this position is often connected to the position of Vice President (VP), but it is different. The position of DPM must not conflict with the office of the Ministry or the Prime Minister (PM) of the country. This position is also one of the important constitutional positions in constitutional law, as the person is constitutionally and legally qualified to replace the PM when the permanent or temporary vacancy of the position is achieved. The current study exposes the question of whether the DPM is equal with the Prime Minister in terms of the conditions that must be met in the mechanism of his selection or appointment. Besides, what are the rights and duties of the deputy, and is it possible for the deputy prime minister to replace the prime minister in his absence. The importance of research is also considered in Arab and international constitutional jurisprudence, which does not address the position and personality of the DPM except in a brief form that is almost accidental. In addition to the difference of

political systems view of it according to different criteria, also, the incumbent of this position is not considered to have the same importance in the same state, as this varies according to the constitution of the state itself and the view taken by the constitutional legislator regarding the occupation of this position.

## **RESEARCH TOPIC.**

The Prime Minister (PM) of Iraq is the head of the Iraqi government and the Iraqi Council of Ministers. Besides, it is the direct executive responsible for the general policy of the state and the commander-in-chief of the Iraqi armed forces, where it is assigned by the President of the Republic as the candidate of the most numerous parliamentary bloc. Then, forming the Council of Ministers within fifteen days from the date of the election of the President of the Republic according to the Iraqi constitution of 2005. On the other hand, the position of the Deputy Prime Minister (DPM) is also one of the important constitutional positions in constitutional law at all Arab and international levels, Despite the importance of this position, different political systems view it from different criteria. Also, the incumbent of this position is not considered to have the same importance in the same state, as this varies according to the constitution of the state itself and the view taken by the constitutional legislator about the occupation of this position.

## **THE RESEARCH PROBLEM**

The problem of this study is the constitutional and legal absence that takes it upon itself to refer to this important position and defines its competence and powers. Thus, this problem shows the most important problem of this study, including what is the legal and constitutional adaptation to the position of DPM, which are described as follows .

- ❖ Is the position of the PDM considering a public servant or assigned to a public service?
- ❖ Is the position of DPM equal to the position of PM in terms of the conditions that must be met in the mechanism of his selection or appointment?
- ❖ What are the rights and duties of the DPM of the Republic and his powers, and does the DPM replace the PM in his absence, or is there a legal and constitutional impediment preventing that?
- ❖ Who is the entity that raises criminal responsibility and is competent to do so for cases of criminal responsibility of the DPM?

## **THE RESEARCH IMPORTANCE**

The research's importance lies in constitutional jurisprudence, which does not address the position and personality of the Deputy Prime Minister except in a brief manner that is almost accidental. In addition to the fact that most legal researchers have not written in this field, thus, there are no clear studies that could examine this issue and its position in the Iraqi constitutional and political system.

## **RESEARCH METHODOLOGY**

the analytical method was adopted in this research, which represents the mechanism for electing the DPM in the Constitution of the Republic of Iraq for the year 2005. Coupled with, the cases of position in another site that are similar to those who occupy the same position, although the Constitution of the Republic of Iraq for the year 2005 did not indicate cases of work position in detail.

## **RESEARCH PLAN**

The research was dealt with in two sections, the first dealt with. Introducing the DPM that subdivided into three demands, the first one dealt with the idiomatic meaning of the Deputy Prime Minister, the second demand dealt with the emergence of the position historically, and the third dealt with distinguishing the position of DPM from the position of the VP of the Republic. The second section was devoted to the mechanism of electing the DPM, which was categorized into three demands, the first demand dealt with the number of DPM according to the 2005 constitution, and the second demand dealt with the duties and responsibilities of the DPM. Besides, The reasons for termination of the assignment of the position of Deputy Prime Minister

## **SECTION ONE**

### **(INTRODUCING THE DEPUTY PRIME MINISTER)**

Regardless of the name of the person who holds the position, it is quite recent. The emergence of this position was connected with the emergence of the Prime Minister position, noting that there is no connection between the position of Prime Minister and the appointment of a deputy for him. There is no constitutional or legal obligation, which stipulates that one or more deputy prime ministers must be appointed in all political systems in general. It is not associated with the two positions unless there is an explicit constitutional provision that obliges the prime minister to appoint one or more deputy prime ministers. Otherwise, the prime minister

abstaining from the obligation to appoint a deputy for him under any circumstance in the absence of a constitutional article referred to this position (Musddiq Adel Talib, 2014).

### **THE FIRST DEMAND (IDIOMATIC MEANING OF DEPUTY PRIME MINISTER)**

The idiomatic meaning of the Deputy Prime Minister as most of the Iraqi constitutions defined it by the text “The government consists of the prime minister and deputy prime ministers”. It was clear from this article that the deputy prime minister is a member of the government as mentioned in Article (66) of the interim Constitution of Iraq for the year. along with, what the government has followed in accordance with Article (61) of the 1968 constitution that consists of the President of the Republic and his deputy, and one or more deputy prime ministers, which is also adopted by the 1970 constitution. It is also called in some studies the Council of Ministers, where This term is often used in royal constitutions, and it is a trend that some of the jurisprudence followed. However, there is no connection between this name and royal constitutions, and most royal constitutions use this term with the term government (Suleiman Muhammad Al-Tamawi, 1996). Hence, the DPM is therefore a member of the government, a government official who held the responsibilities of the PM temporarily in his absence or if he is delegated to a specific event or activity by the PM. However, there is a question raised in the definition of the Deputy Prime Minister is in the following form: Is the Deputy Prime Minister considered an employee and is subject to the Civil Service Law in terms of rights and duties. The Law No. (24) of 1960 did not mention that the Deputy Prime Minister is among the employees. Similarly, the Owners Law No. (25) for the year 1960 was evident that the position does not have an administrative description in this law, meaning that, it does not occupy a permanent position, but rather is limited to the end of the electoral cycle. Therefore, the legal mandate for the position of DPM is that a person is assigned with public service. This is what was referred to in Article (19/Second) of the amended Iraqi Penal Code No. (111) of 1969, which defines a public servant as “every employee or worker entrusted with a public task in the service of the government, its official and semiofficial departments, its official branch, and the public interests affiliated with it or subject under its control, including the Prime Minister, his deputies, and the ministers”. (Musddiq Adel Talib, 2014; p17). From the foregoing, it can define the position of DP as “ the person assigned with a public service, who is entrusted with the task of assisting the PM, meeting the constitutional and legal conditions to occupy the position of the Ministry or the Presidency of the Council of Ministers, and is appointed after a proposal for his nomination by the Prime Minister and approval on his



appointment by the House of Representatives, and he is directly associated to the Council of Ministers as a member of it” (Dr. Musddiq Adel Talib, 2014; p17).

## **THE SECOND DEMAND (HISTORY OF THE POSITION)**

Those interested in studying previous Iraqi constitutions note that they did not indicate or regulate the position of DPM, as the majority in the absence of explicit articles in the constitutions dealing with the legal and constitutional status of the DPM. Despite that fact, the political reality in these countries indicates the emergence of this position from outside the constitution, and thus this position does not carry any specific constitutional powers, including that the deputy prime minister does not replace the prime minister under the constitution in his absence. It is noted that most constitutions tend not to include explicit articles dealing with the position of Deputy Prime Minister, in addition to the fact that jurisprudence did not comment this position on the existence of the constitutional text. Concerning the extrapolating of the Iraqi constitutions, it can find that the position of Deputy Prime Minister did not follow a single pace in terms of its constitutional foundation. Once, it can find that it arises from the core of the constitution, as is the case in the constitution of the year 2005, and the abolish constitution of 1970. In contrast, it can find that it arises from outside the provisions of the constitution as this is the case in the Basic Law of 1925 and the Constitution of 1958 (Musddiq Adel Talib, 2014: p 19). Therefore, the historical background of this position can be subdivided into two intervals as follows: -

## **THE POSITION OF PRIME MINISTER IN THE POST-2003 PERIOD, AND THE GOVERNING COUNCIL**

The Governing Council was formed on July 12, 2003, by a decision of the Unified Coalition Authority and granted partial powers to manage Iraq's affairs, as it is the second administrative body formed in Iraq in chronological order after the war (the US and its allies) on Iraq in March 2003, which ended with the occupation of Baghdad on April 9, 2003. Paul Bremer was the first administrative body to take over the affairs of Iraq after the occupation, and the unified coalition authority had full powers according to the laws of war and military occupation agreed upon in the United Nations. The period of the Governing Council, which is considered the collective leadership of the Iraqi state during the period of the American occupation of Iraq, which some jurisprudence considers that the members of the Governing Council are each appointed to the position of Deputy Prime Minister during that period (Tariq Harb, 2011). However, this statement is absolutely not true, as the Governing Council is

considered the Presidential Council of the state and according to the analogy of the dissolved State Leadership Council in the previous Iraqi constitutions. On the other hand, those who believed that the deputies of the Governing Council are deputies to the Prime Minister, it is a wrong reading, given that the Governing Council is a Council of Ministers, which is an extrapolation of Resolution No. (29) of 2005 issued by the Prime Minister. This Decision included the retirement of (12) deputy members of the Governing Council, and it is noted in this decision that it was considered the order of referring the members of the Governing Council to retirement starting from 1/6/2004, meaning that it was issued retroactively. It is noted that the position of Vice President was not issued with the Governing Council announcement. Knowing that the appointment of deputy prime ministers, as in the successive Iraqi constitutions, included in the decree forming the government, which is not the case in this imposition. Accordingly, the Deputy Chairman of the Governing Council cannot be considered equivalent to the position of Deputy Prime Minister. Although there is no constitutional or legal text regulating the position of Deputy Prime Minister. However, the political reality at that time was referring to the assignment of this position to Barham Salih of the Kurdistan Alliance as reported in the decree forming the temporary ministry, as well as the supplement to the Law of Administration for the State of Iraq for the Transitional Period issued on May 31, 2004 (Al-Waqa'a Al-Iraqiya, 2004: No. 3986). In addition, Republican Decree No. (85) on October 31, 2005 (Al-Waqa'a Al-Iraqiya, 2005: No. 4009).

## **THE POSITION OF PRIME MINISTER IN THE CONSTITUTION OF THE REPUBLIC OF IRAQ FOR THE YEAR 2005**

In the Constitution of the Republic of Iraq for the year 2005, it can find that Article (139) of it stipulates that (the Prime Minister shall have two deputies in the first electoral cycle), as well as the Article (79) of the Constitution stipulating that (The Council of Ministers shall take the constitutional oath before the House of Representatives by the formula stipulated in Article (50) of the Constitution (Articles 139 and 79. There is a question that arises, is the appointment of deputy prime ministers an obligatory matter for the prime minister under the 2005 constitution of the Republic of Iraq, or is it a permissive matter that leaves his assessment to the authority of the prime minister? The text of Article (139) from the Constitution of the Republic of Iraq for the year 2005 showed that it made the appointment of deputy prime ministers a permissive and not obligatory matter for the Prime Minister, which is what is understood from the phrase (Article (139) of the Constitution of the Republic of Iraq). In spite

of this, the presence of a DPM is an imperative in the constitution, where who holds the powers of the PM in his absence, and who will replace the prime minister in the event of a criminal indictment. Therefore, the researcher concluded that the Constitution of the Republic of Iraq for the year 2005, which founded the position of Deputy Prime Minister without indicating the powers involved in its performance. Besides, the position of Deputy Prime Minister in Iraq is a constitutional position, as it arose from the core of the constitution based on Article (139) of it.

### **THE THIRD DEMAND (THE POSITION OF DEPUTY PRIME MINISTER IS DISTINGUISHED FROM THE POSITION OF VICE PRESIDENT OF THE REPUBLIC)**

The position of DPM is similar to that of the Vice-President of the Republic, and that both are among the important constitutional positions addressed in the Constitution of the Republic of Iraq for the year 2005. They assign the nomenclature of the incumbents within one political deal, but despite that similarity, they differ from each other in some differences that can be summarized as follows.

#### **1. Constitutional organization of the position.**

The Constitution has dealt with its texts regarding the position of the Vice-President of the Republic. In addition to the fact that the House of Representatives has passed a law relating to the Vice-Presidents of the Republic, which is Law No. (1) of 2011, which dealt with many matters, including authority, responsibilities. The constitution did not address the provisions of the position of prime minister except in one article related to the number of representatives in the first electoral cycle. Just as, Parliament did not issue a law relating to the executive authority or law for the Council of Ministers that regulates the constitutional and legal status of the deputy prime minister. Moreover, the Council of Ministers was also not indicated during the issuing of its internal system and the workflow within the Council of Ministers, where this lack of the powers for the position of Deputy Prime Minister was recorded. All of this is considered as a matter of lack and legislative negligence or legislative abstention for this vital constitutional position.

#### **2. In terms of solutions.**

The Vice President of the Republic replaces the President once one of the reasons of position vacancy is achieved following Article (75) of the Constitution of the Republic of Iraq for the year 2005. On the other hand, the Deputy Prime Minister does not replace the Prime Minister when the position becomes vacant, but the President of the Republic replaces him, according to Article (81) of the Constitution of the Republic of Iraq for the year 2005 (Article 81).

3. In terms of responsibility.

Law No. (1) of 2011 “Law Regulating Vice-Presidents (for the Three Powers) was equated the president with his deputy concerning initiating criminal responsibility. Unlike the position of Deputy Prime Minister, which has only the power to initiating political responsibility as a member of the government or ministry, because he cannot initiate criminal responsibility or apply it to the Deputy Prime Minister, because there is no clear constitutional text ordering that.

4. In terms of the distribution of powers

The general legal rule requires that the Vice President of the Republic assume the powers of the President in his absence or replace him, unlike the position of Deputy Prime Minister who cannot exercise these powers. This is due to the legislative omission, and the absence of a constitutional provision that allows such solutions, but this does not prevent the possibility of the Prime Minister using the delegation rule and granting his powers for a specific period to a deputy. Accordingly, the powers of the DPM are subject to the will of the PM, and this is one of the most important reasons for legislative omission or what is known as legislative abstention, to address that deficiency that negatively affects the leadership of an important joint of the Iraqi state (Musddiq Adel Talib, 2014: p30-31). Therefore, the position of Vice President of the Republic is one of the very important positions, especially when a constitutional vacuum occurs, and the question arises as to why the position of the Vice President of the Republic remains vacant in the current cycle?

## **SECOND SECTION**

### **THE MECHANISM FOR THE ELECTION OF THE DEPUTY PRIME MINISTER**

The mechanism for electing the Deputy Prime Minister (DPM) means the application of the constitutional and legal conditions that must be met by the candidate for the position of DPM, the criteria for his election, the mechanism specified by the constitution, and the complementary laws about his appointment. It is noticeable that the Iraqi constitutions, as well as their Arab counterparts and some European ones, did not agree among themselves on how to choose the deputy prime minister, and they took several directions for that as follows:

1. The constitution took a position of silence regarding the mechanism for appointing the DPM. Despite what seemed unconstitutional in appointing mechanism of the DPM if this position was not stipulated in the constitution, still, the deputy prime minister is considered a constitutional position, and stipulating it requires a general rule for the possibility of its

emergence. However, the political reality indicates otherwise, as it is possible to appoint deputy prime ministers by the same mechanism in which the prime minister is appointed.

2. Mentioning explicit texts regulating the constitution's treatment of the mechanism for electing a deputy prime minister, and reporting the conditions that must be met in the original texts. However, it can be observed that the successive Iraqi constitutions, sometimes take the first direction, and sometimes take the second direction (Muhammad Abd Ali Al-Ghazali, 2011: p 163).

After what has been explained above, and to find out the provisions related to choosing or appointing a deputy prime minister, it must divide this section into two demands. The first one included the number of deputy prime ministers in the constitution of the Republic of Iraq for the year 2005. Besides, the second demand addressed: The duties and responsibilities of the Deputy Prime Minister are as follows

### **THE FIRST DEMAND (NUMBER OF DEPUTY PRIME MINISTERS IN THE CONSTITUTION OF THE REPUBLIC OF IRAQ FOR THE YEAR 2005)**

The Constitution of the Republic of Iraq for the year 2005 states that it dealt explicitly with the number of deputy prime ministers, as Article (139) of the Constitution indicated that it stipulates that “the Prime Minister shall have two deputies in the first electoral cycle. It is clear from the above text that dealt with the number of deputy prime ministers that the prime minister must have two deputies in the first electoral cycle, and from the concept of violation, the prime minister can appoint more than two deputies for him in the second election cycle and beyond. As well, the Federal Supreme Court in Iraq has indicated in its interpretation, which is explicitly addressed in its Decision No. 24/Federal/2011 issued on 5/16/2011 that “The appointment of Deputy Prime Ministers and their number is a discretionary power granted to the Prime Minister”. The text of Article (139) of the Constitution showed that it limited the principle of appointing deputies to the PM, but it limited them to two in the first electoral cycle of the Iraqi House of Representatives. Then, this topic was left to the discretion of the PM in determining the number DPM in subsequent cycles, as required by the ministerial program and in accordance with the tasks entrusted to him and the powers granted in Articles (78), (80) of the Constitution of the Republic of Iraq for the year 2005. This demand can be categorized as follows: -

## **CONDITIONS REQUIRED FOR THE POSITION OF DEPUTY PRIME MINISTER**

it was noted from the previous Iraqi constitutions that they did not follow a unified course regarding the conditions to be met in the position of Deputy Prime Minister, as these constitutions followed several trends that can be summarized as follows.

- ❖ Specific criteria for the position of DPM.
- ❖ Equality between the criteria of the position of Prime Minister and DPM.
- ❖ The state of silence regarding the handling or regulation of the principles related to the DPM, which is the most common trend.

This difference is not only in the previous Iraqi constitutions, but also included the Constitution of the Republic of Iraq for the year 2005.

## **CRITERIA FOR ELECTING A DEPUTY PRIME MINISTER ACCORDING TO THE 2005 CONSTITUTION**

Although the Constitution of the Republic of Iraq for the year 2005 did not include any criterion for choosing the DPM, the sectarian quotas and national partnership informing the government have become the criterion to be relied upon in choosing the Iraqi DPM. Accordingly, political and sectarian considerations have a primary role in the process of electing a deputy prime minister, as a constitutional custom arose after the implementation of the 2005 constitution to select two deputy prime ministers, one from the Kurdish sectarianism and the other from the Sunni Arab sect. Even though the constitution chose the parliamentary system, whose origins require the formation of the government by the leader of the parliamentary majority without regard to the issue of sectarianism or the category that the prime minister wishes to give him this position, but the political agreements have replaced the constitution in this matter. It is clear that the distribution of the position of Deputy Prime Minister among the blocs is done by consensus based on the principle of the government of national partnership instead of the principle of the parliamentary system, and this refers to what was mentioned in Articles (49/first), (105), (125) of the Constitution of the Republic of Iraq for the year 2005. Article (49) of the Constitution of the Republic of Iraq for the year 2005 stipulates that: "Representation of all components of the people in it shall be taken into account." On the other hand, Article (105) of the Constitution states that: "A public body shall be established to guarantee the rights of regions and governorates that are not organized in a region, inequitable participation in the management of the various federal state institutions, scholarships and fellowships, regional and international delegations and conferences, and consisting of

representatives of the federal government, regions, and governorates that are not organized in a region, and regulated by law.” Article (125) of the Constitution states that: “This guarantees this the constitution shall have the administrative, political, cultural and educational rights of the different nationalities, such as the Turkmen, Chaldeans, Assyrians, and all other sectarianisms. Although many considerations have an impact on choosing the DPM, which are religious, sectarian, and national considerations, consensus, and political disputes. The personal appreciation of the PM is the preferred criterion for choosing the deputy prime minister along with political considerations, unlike other considerations that it does not have an effective influence in this selection if the Prime Minister enjoys an absolute majority of the House of Representatives members. In contrast, if the majority is not achieved in this event, the process of selecting Deputy Prime Ministers is governed by political consensus. However, the political deals or political bargaining are the ones that decide and determine the course of this selection (Musddiq Adel Talib, 2014: p 73). It can be concluded from this that despite what appears to be the free hand of the Prime Minister in determining the cabinet lineup, including the deputy prime minister. The demographic map, the elections, and the political reality require that one of his deputies be from the Kurds, and the second from the Sunni Arabs, even though the constitution did not impose this. The political and social reality in Iraq imposes this under the constitutional custom that arose before and after the entry into force of the Constitution of the Republic of Iraq for the year 2005, despite the absence of a text that prevents the DPM from being from the same party list to which the Prime Minister belongs.

## **THE SECOND DEMAND (DUTIES AND POWERS OF THE DPM IN THE 2005 CONSTITUTION)**

The DPM occupies a sovereign position, where this position imposes on the incumbent many duties and powers, some of which are constitutional duties such as the constitutional oath, and others are political duties as a representative of particular sectarianism. In addition to this, the incumbent of this position is imposed on many duties stipulated in the laws and regulations, such as the financial interest’s disclosure form. Therefore, this demand must divide into two sections, the first deals with the duties of the DPM, while the second section will deal with the powers of the DPM.

## **A- DUTIES OF THE DEPUTY PRIME MINISTER**

The Deputy Prime Minister enjoys numerous rights and benefits, while the extrapolation of the Constitution of the Republic of Iraq for the year 2005 did not devoid any rights related to the DPM. On the other hand, the laws approved granting many rights, primarily the salary and allowances, while the second is that the equality with the ministers in benefiting from housing the diplomatic passport. This is about the rights of the Deputy Prime Minister during his service, as for his post-service rights, which are represented in the retirement salary, and the retention of Diplomatic Passport for a period of time. Conversely, there are many duties entrusted to the Deputy Prime Minister, including the following.

- ❖ The relationship of the Deputy Prime Minister with the Council of Representatives, as the Council is the competent authority before which the DPM swore the constitutional oath in accordance with Article (79) of the Constitution of the Republic of Iraq for the year 2005.
- ❖ The duties assigned to the Deputy Prime Minister in the context of a relationship with the Speaker of Parliament, and the possibility of assigning him many tasks by the Prime Minister, such as managing an acting ministerial portfolio and others. Thus, the duties of the Deputy Prime Minister are as follows:

### **I. The constitutional oath:**

The Constitution of the Republic of Iraq for the year 2005 dealt with the constitutional oath in articles (50), (71), (79) of, the first thing to notice is that the constitutional oath is one, whether is it the President of the Republic or the Prime Minister or the President and members of the House of Representatives or the Deputy Prime Ministers. Then the content of duties is limited to one type of the mentioned persons and is represented by the following.

#### **1- Performing legal duties and responsibilities with dedication and sincerity**

It is noticeable in this regard that the text did not show what is the criterion of dedication and sincerity, as it is noted that the term tasks and responsibilities are loose and difficult to define. It would have been more appropriate for the constitutional legislator not to put the word legal after the tasks and responsibilities, because the constitution contains many political duties entrusted to the deputy prime minister, such as observing the political balance in the distribution of positions and jobs and the peaceful transfer of power. Hence, it is not possible to adapt the aforementioned duties in the event that the aforementioned description is maintained, and it should be replaced by the phrase “performing the functions or powers with dedication and sincerity” (Musddiq Adel Talib, 2014: p106).



2- Preserving Iraq's independence and sovereignty

This duty is considered part of the duty of loyalty that the minister owes to his nation and his people, and it should be noted that this duty has many acts that, if committed by the minister, would be considered a breach of this duty, as in the case of his commission of crimes against the internal or external security of the state.

3- Taking care of the people interests

It would have been better for the legislator to formulate the text in a more obligatory form and to replace the word (care) with the word (investigative), as it involves more positive duties towards these interests.

4- Watching over the safety of Iraq's land, sky, water, and wealth, and its federal democratic system.

5- Working to preserve public and private freedoms and the independence of the judiciary.

6- The obligation to implement the legislation honestly and impartially.

These duties require the adherence to the principle of legality, and its meaning is directed to the application of legal rules, whatever their source, even if they are stipulated in the constitution, law, decisions, regulations, or instructions. Therefore, the deputy prime minister must abide by the law in the actions issued by him, and implement the decisions issued by the Council of Ministers, as he participates in voting on these decisions, even in the case in which he does not participate by voting. Besides, works as a homogeneous unit with the Prime Minister and other ministers in order to implement the general policy of the government according to (Article 67) of the Constitution of the Republic of Iraq for the year 2005. Accordingly, it becomes clear that the concept of legislation is inclusive of all legal rules, regardless of their source, including the constitution. Therefore, it should be not supporting those who argue that the wording of the oath does not contain explicit expressions to ensure respect for or defense of the constitution (Ali Youssef Al-Shukri, 2010: p 24).

Finally, it can see that the religious formula dominated the Iraqi constitutions issued during the republican era in general, and the constitution of the Republic of Iraq for the year 2005 in particular. The formula of the oath begins with the phrase (I swear by Almighty God) indicate the religious character of the constitutional oath (Article 50) of the Constitution of the Republic of Iraq for the year 2005.

II. The duty of full-time,

Full-time work of the Presidency of the Council of Ministers supported by the constitution, as the prevailing trend in constitutions must prevent the Deputy Prime Minister from working in many jobs, which is called the duty of full-time or the prohibition of practicing professions of various types. Article 127 of the Constitution of the Republic of Iraq for the year 2005 states: "It is not permissible for the President of the Republic, the Prime Minister and members of the Council of Ministers, the Speaker of the House of Representatives, his two deputies, members of the Council, members of the judiciary, and those with special degrees, to take advantage of their influence to buy or rent anything from the state, or to rent or sell to it some of their money, or to use it for it, or to conclude a contract with the state in their capacity as obligors, suppliers or contractors (Article 127). Moreover, there is another question is, is it permissible to hold the position of DPM and the position of the Ministry at the same time. The position of DPM as long as he was given confidence in the House of Representatives as a member of the government, so it is possible to appoint him to the position of minister without the need to obtain confidence again from the House of Representatives. But it is clear that this is a point of contention among legal scholars, as the appointment of the DPM as a minister needs the approval of the House of Representatives, as giving him confidence in filling a position of prime minister and not appointing a minister, and then to ensure the continuity of the functioning of public utilities, and to enable the prime minister to manage the government most fully. Furthermore, as long as there is no constitutional text that prevents this, and the original is in the permissible things, so the DPM can assume the position of a specific ministry by proxy or authentically along with his position as deputy prime minister. Provided that the work is temporary, in addition to the necessity of obtaining confidence from the House of Representatives on the appointment authenticity or proxy, as there is no constitutional or legal provision prohibiting this. On the other hand, the DPM may not receive the minister's salary in the event of a combination of the two positions, for several reasons, including Constitutes wealth for no reason, and the general principles of the job do not allow combining two salaries at the same time.

III. The duties stipulated in the laws and regulations

There are many duties stipulated in the laws imposed on the DPM, the most important of these duties is the duty to submit a financial disclosure report (financial interests disclosure form) (formerly). This duty is one of the basic duties that the DPM must perform, as he is obligated to submit it with the PM, the ministers, and those of their rank from the heads of

independent bodies and other persons specified by Article (17) of the Law of the Integrity Commission in force. Concentrating that the legislator did not specifies the period during which the form must be organized and its effect, as the repealed Integrity Commission law did. It is also noted that the approach of the Iraqi legislator is better than the Lebanese legislator in this regard. Referring to the Lebanese Illicit Enrichment Law No. (154) on 27/12/1999, it did not mention the Deputy Prime Minister among the people who are required to declare their money, because the deputy prime minister is not mentioned in the constitution (Walid Abla, 2008: p 75). In light of the Law of the Public Integrity Commission issued by Order No. (55) of 2004, which is repealed, organizing the aforementioned form upon assuming the position is a condition of appointment in the special degree and its continuation, and then if the form is not dictated, the appointment is considered not to meet the objective aspects stipulated by law, the employee who refrains from organizing the said form must be dismissed based on the provisions of Clause (2) of Section (7) of the said law ( Musddiq Adel Talib, 2014: p 116). Some of the jurisprudence has gone to adapting the appointment order as incomplete if the mentioned form is not organized, which the researcher does not support explicitly with the provisions of the seventh section of the mentioned order, as it was considered one of the conditions for appointment, and then the mentioned condition is considered one of the conditions of appointment. Based on that the provisions of the articles of the Civil Service Law No. (24) for the year 1960 will be applied in the event of its absence. Therefore, there is no justification for diligence in the source of the text, so we do not support the conclusion of the aforementioned opinion

## **B- THE POWERS OF THE DEPUTY PRIME MINISTER**

The Constitution of the Republic of Iraq of 2005 did not specify any powers for the DPM, although the political reality indicates that it has no specific powers, but the prevailing opinion is otherwise. The DPM is considered an advisor to the PM, which has many powers as a member of the Council of Ministers and has the right to attend the meetings of the Council and vote on these decisions. The political reality in Iraq indicates that the DPM derives authority not only from his constitutional powers but from sectarian participation in power. The constitution is devoid of a statement of these powers before the issuance of this constitution, as this position is linked to the decree of forming the government, so there is no constitutional or legal impediment to the PM in appointing a deputy for him even in the absence of a constitutional text permitting this.

## **THE THIRD DEMAND**

### **THE REASONS FOR TERMINATION OF THE ASSIGNMENT OF THE POSITION OF DEPUTY PRIME MINISTER**

From the extrapolation of the Constitution of the Republic of Iraq for the year 2005, it can find that it is devoid of a text specifying the cases of termination of the service of the DPM despite that, the cases of termination of the assignment are diverse. It is represented either by terminating the specified period for occupying the position and or terminating the service by resignation or dismissal, or by referral to retirement or death, as well as, compulsory leave. The political reality shows temporary suspensions of the DPM from work, as is the case in the compulsory leave, and this case raises the question; What is the legal nature of this leave, is it adapted to suspending the Deputy Prime Minister from work. The constitutions and laws that complement them are based on a general rule that the term of the DPM is not specified. Therefore, it becomes clear that the term of the deputy PM term is related to the same term of the prime minister's term of four years, without prejudice to the prime minister's authority to exempt a deputy and appointing a replacement for him before the termination of the mentioned period. But this is conditional on obtaining the approval of the House of Representatives for the dismissal or exemption. The same is happening in the Constitution of the Republic of Iraq for the year 2005, as despite the importance of specifying the term of the DPM, it is noted in this regard that the constitution is silent about regulating this explicitly. Among the reasons for terminating the assignment from this position are the following:

#### **I. General reasons**

- ❖ The termination of the DPM assignment, which is by the exhaustion of the maximum period for occupying the position. However, the constitution has not clarified his fate, and in the absence of a constitutional and legal determination of this, the general rule is applied, which is to refer him to retirement, and then he may work in any field, provided there is no legal text preventing it from doing so.
- ❖ Death or Disability: Death is considered one of the natural causes for the termination of the assignment or service, regardless of the reason for that, it is equal in that whether it is natural or premeditated. On the other hand, the state of temporary vacancy of the Deputy Prime Minister is achieved by his inability to perform his duties, and it means "a decrease in the ability to work fully or partially due to illness" (Health Disability Law No 11, 1999).

- II. Private reasons. These reasons relate to the individual desire of the Deputy Prime Minister, and these reasons are:
- 1- Resignation. The resignation of the DPM is intended to express the editorial desire to leave work permanently, and not temporarily, by refraining from carrying out the duties and tasks stipulated in the Constitution and related laws (Ali Yousef Al-Shukry, 2010: p 363).
  - 2- The political boycott. It is called seclusion, and it contains disadvantages, as it leads to disruption of the constitutional provisions. As well as, paralyzing the governance mechanism by disrupting the work of the government, which constitutes an explicit violation of the principle of continuing the work of public authorities, and also seclusion affects the reality of ministerial solidarity (Haidar Al-Mawla, 2011: p 638).
  - 3- Referral to retirement. The general rule is: Referring the employee to retirement is by the same legal tool in which he was appointed (the General Authority of the State Consultative Council, 2005). So, for the sake of analogy, the referral of the Deputy Prime Minister is not by the Prime Minister based on a rule of parallel competencies, as he is the party that proposed his appointment. Hence, the above article should not be relied upon in adapting the matter of referral to retirement, as it is a procedural rule and not an objective one. The legal tool for appointment is the same as the legal tool for retirement (the decision of the General Authority of the State Consultative Council 2006).

## CONCLUSIONS.

1. The Constitution of the Republic of Iraq for the year 2005 established a time ban that the Prime Minister shall have two deputies in the first electoral cycle. From the concept of violation, the prime minister can appoint more than two deputies for him in the second election cycle and beyond
2. The equality between the criteria of the position of Prime Minister and DPM.
3. The Deputy Prime Minister must take the constitutional oath before commencing the work of his position, in addition to his obligation to devote himself to this work without having the right to engage in other professions or jobs.
4. The Iraqi constitution of 2005 has been silent about the term of office of the deputy prime minister, as we see the obligation of deputy prime ministers linked to the term of the prime minister, and then the deputy prime minister continues in their positions for the duration of the prime minister who appointed them if he orders them to be relieved of their positions
5. The Constitution of the Republic of Iraq for the year 2005 did not address the withdrawal of the Deputy Prime Minister from the political bloc to which he belongs as a sufficient

reason for his dismissal from his position, as long as the nomination of the deputy is within one political deal.

## **RECOMMENDATIONS.**

1. Inviting the Council of Representatives to issue the Cabinet Law in a way that overrides the shortcomings found in Cabinet Law No. (20) of 1991 regarding its failure to address the constitutional status of the Deputy Prime Minister and his authority.
2. Calling on the House of Representatives to include in the provisions of its internal system the criminalization of political boycott of cabinet sessions.
3. Calling on the Council of Ministers to issue the internal system of the Council of Ministers and to include explicit texts dealing with the powers of the Deputy Prime Minister.

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