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Al-Baidar Center For Studies And Planning



Research paper

The Federal Principle from the Perspective of the Supreme Federal Court:

A Constitutional Approach in Theory and Practice

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Introduction

The federal principle is a set of values that defines the general framework of federal constitutional theory. Even though these values are the result of the early implementations of the authentic federal idea, these implementations themselves stem from the fundamental and constant principle required by the federal experiment, namely the principle of power distribution. Federal values have thus been subject to relative change to adapt them to the political, geographical, social, and economic circumstances of their application—a balanced change that preserves their essential core, which is the “federal hypothesis” and allows their features to be declared for a particular context.

When the Iraqi Constitution of 2005 for the first time adopted the federal system, it was assumed that the Iraqi federal experiment would be consistent in theory and practice with the essentials of the federal principle. Despite the vast diversity in the application of federal theory, some constants are shared, including the distribution of constitutional competencies, the plurality of government levels, and constitutional duality. The Supreme Federal Court was able to adjudicate many cases related to the practical application of federal theory, both directly and indirectly. For this reason, this research is allocated to extrapolating the position of the Supreme Federal Court on the federal principle, striving to create a constitutional comparison between its stance and related rulings on one side and the challenging federal hypothesis on the other.

Topic One: The Position of the Supreme Federal Court on Constitutional Duality

The nature of the federal system necessitates the organization of the exercise of authority at two levels, each representing specific interests: The federal level represents the general interests of the federal state, which concerns all its components, while allowing the units (regions) to express their interests. These interests are relative and differ from one unit to another. Thus, exercising power at two levels to express different interests is the essence of the federal system, for this system necessitates the realization of both partial self-government and general joint government. Since the constitution is the comprehensive framework for organizing the expression of these interests—that is, the organization of the exercise of authority at each level—it has become necessary to have constitutional duality: one constitution for the exercise of authority at the federal level and another for the exercise of authority within the units.

Issue One: The Supreme Federal Court's Position on Regional Constitutions

The Supreme Federal Court of Iraq had the opportunity to consider the necessity for the Kurdistan Region to draft its own constitution. It examined a lawsuit filed against the Speaker of the Federal House of Representatives, the Regional Parliament, the President of the Republic, and the President of the Region, seeking to compel the region to implement Article 120 of the Constitution, which obliges the region to enact its own constitution if it does not contradict with the federal constitution. However, the Court dismissed the case on substantive and procedural grounds. Procedurally, the court viewed that the lawsuit was not properly directed to the House of Representatives and that it lacked jurisdiction, as such competencies are not listed within Article 93 of the Constitution, which enumerates the powers to decide issues regarding the obligation of the regions to draft their own constitutions.

Substantively, the court found that there was no ground for grievance as per Article 6 of the Civil Rights Law and Article 6/Second of the Court's internal regulations. Citizens' rights are organized under the Iraqi constitution and are not the concern of the regional constitution. Furthermore, the powers of the federal and regional authorities are regulated by the federal constitution. Accordingly, the court decided that "the region is free to issue its own constitution according to its political circumstances, noting that Article 120 of the Constitution does not specify a timeframe within which the region should draft its constitution. The deliberate omission of such a period springs from the nature of the constitution as a political document before being a legal one, meaning that political parties should agree on its mechanisms, content, and time of approval through the legal channels within the region and under the federal constitution, ensuring all sects are involved in its drafting to reflect the needs and requirements of the Kurdish society"¹. We have some observations regarding the court's position:

First: The court's assertion that there is no grievance is open to question from several perspectives. What harm is meant by "no grievance"? What are the tools for verifying its presence? Is there any harm greater than the inconsistency of the state's form? Federal theory requires a recognition of constitutional duality not as a freedom or discretionary power, but as a definitive axiom. Thus, the absence of regulation of the exercise of political power in the region is a verified harm, which is amplified in the Iraqi federal system that, in practice, involves only one region. This makes the Iraqi federation bipolar; thus, how is regulation at the federal level reconciled with a lack of regional regulation? Is this not a clear imbalance and structural flaw that must be corrected? Furthermore, constitutional provisions are meant to be implemented, and any abstention from enforcement constitutes harm, regardless of the arguments presented for justification or the consequent effects.

1. See the Supreme Federal Court Ruling No. 81/Federal/2022

Second: While Article 120 of the federal constitution indeed does not specify a period for the region to draft its constitution, this cannot be interpreted as granting perpetual freedom to the region to draft its constitution or not, based on its internal political circumstances. The correct interpretation is that, by abstaining from setting a timeframe, the constitutional drafter meant that this should occur within a reasonable period necessitated by the first experiment in federalism. Given that more than 17 years have passed in the Kurdistan Region with achieved political stability, and considering the extended period of self-rule, the period now approaches half a century. Is this not a sufficient time for the right circumstances to draft a regional constitution?

Third: How can the realization of such a fundamental principle of the federal system be hinged on the notion of political consensus, a term that, if allowed to govern the process, creates a vicious cycle? Who are the parties to this consensus? When will it be achieved? What are its mechanisms? Political consensus is a relative concept, so how can a fixed constitutional value be made dependent on a changing political one? The constitution is not merely a political document as the court suggests, but rather a legal formulation of a political idea—the matter is not about prioritizing politics or law, but about employing both for control. Therefore, the relationship between law and politics is complementary, and the implementation of constitutional rules should not follow whichever is prioritized. From the court's position, it essentially conditions the drafting of the regional constitution upon political consensus as a necessary political circumstance. But are not the repeated attempts to draft the constitution evidence of such consensus? According to the Supreme Federal Court's logic, Article 120 cannot be implemented unless political consensus is achieved in the region. Do not the repeated attempts, some of which reached advanced drafting stages awaiting only public referendum for final adoption, prove the existence of consensus? Since drafting itself requires

consensus, the completion of that stage is evidence of political agreement. The court itself referred to several previous attempts to draft the regional constitution, including the issuance of decision number 5 on 8/9/2005, followed by approval on 24/7/2009, as well as attempts under law number 4 of 2005 for drafting a draft constitution for Kurdistan for a referendum, which were suspended due to political developments and the dissolution of parliament's term.

Fourth: The linguistic formulation of Article 120 commits the region to draft a constitution that determines its structure, authorities, and the mechanisms for exercising those authorities. Therefore, the region is obliged to draft its constitution regardless of its political circumstances, but within a reasonable period. If the constitutional legislator intended to grant such freedom to the regions, the formulation would have been different, perhaps stating (the regions may draft their own constitutions that determine their structures, authorities, etc.). As the text stands, there is no justification for granting the region a freedom it does not have.

Fifth: The argument that the federal constitution regulates the people's rights and the powers of both federal and regional authorities, and thus there is no need to compel the region to draft its constitution, is illogical, for this would mean there is no need at all for a regional constitution since the matters are regulated. Then why did the federal constitutional legislator specify in Article 120 that the regional constitution should determine structures, authorities, and mechanisms, making the provision pointless if it is redundant to federal constitutional texts? There are thus three elements: **first**, if the federal constitution regulates a matter, there is no need for the regional constitution; **second**, the federal constitution organizes rights, powers, and structures of regional authorities; **third**, the constitutional legislator obligated the region to determine these via its own constitution. Given

this, the Court's logic conflicts with the broad framework typically found in federal constitutions, which requires delegating constitutional scope to be filled by regional constitutions according to constitutional accord, allowing the constituent units to express their own unique constitutional preferences ². This line of reasoning undermines the purpose of constitutional duality and the function of subnational constitutions and accords with a model that denies the constituent units' foundational right—something already recognized by the legislator, so there is no basis for restricting or denying this constitutional obligation or tying it to purposes beyond the constitution itself.

Sixth: The claim that the court lacks jurisdiction is questionable. The constitutional obligation for the region to draft its own constitution is established by Article 120 of the Constitution; thus, failure to draft a constitution is a constitutional breach. Since constitutional provisions support one another, the constitutional text prevails by virtue of Article 13, which states the federal constitution is the highest law in Iraq, binding in all its parts without exception, and that any text in regional constitutions or other laws that contravenes it is null and void. If the constitutional legislator prescribed nullification as a sanction for contravening the federal constitution, who determines such nullification? It is the body charged by the constitution with safeguarding its supremacy, the Supreme Federal Court, which has the power to review constitutional compliance. Therefore, the region's refusal to implement Article 120 is a violation, and since the Supreme Federal Court is the guardian of the constitution, it is competent to adjudicate this matter. If the court's argument is that Article 120 does not set a timeframe, then it ought to have adopted the criterion of the reasonable period,

2. The constitutional legislator's organization of this matter is general, as it does not clarify the relationships of the legislative, executive, and judicial authorities within the region, nor does it specify the relationship between the region and the provinces it comprises, which therefore necessitates a regional constitution to detail these issues so long as it does not contradict the federal constitution

for it is illogical to condition adherence to a primary constitutional principle on the political will of the local authority.

Seventh: The Court's ruling contradicts Article 13 of Law No. 18 of 2008, which obliges the transitional legislative council of the region to form a temporary committee to draft the permanent constitution for the region within thirty days of its first session and to complete the draft within four months of forming the committee. If it is argued that these rules apply only to forming new regions (other than Kurdistan), this is correct for the transitional arrangements, but the rules for lasting matters, such as the regional constitution, apply to Kurdistan as well because there is no regional constitution for Kurdistan, and drafting a regional constitution is not a transitional matter. On the contrary, the federal constitutional recognition of the Kurdistan Region and its authorities as a federal region signifies the end of any transitional period, and thus the timeframes for drafting a constitution apply.

Issue Two: The Possibility of the Supreme Federal Court's Jurisdiction over the Constitutionality of Regional Constitutions

The Iraqi constitution does not explicitly provide the Supreme Federal Court with jurisdiction over the constitutionality of regional constitutions. However, such a jurisdiction can be inferred from Article 13, which stipulates the invalidity of any provision in regional constitutions that contradicts the federal constitution. The question is who decides upon this invalidity?

It is the Supreme Federal Court that determines this, as it is the body responsible for ensuring the supremacy of the federal constitution, first; and because the constitutionality of regional constitutions falls under disputes over constitutional oversight, second. The federal constitution represents the highest law, according to Article 13, and there is no dispute that the constitutions of the regions are at

a lower rank than the federal constitution. Thus, this is a dispute regarding the extent to which a lower-level provision conforms with a higher-level provision—a notion reinforced by Article 120 of the constitution, which stipulates that a regional constitution must not contradict the federal constitution³. The jurisdiction of the Court can also be inferred from other constitutional articles besides Article 93, which outlines the Court's authorities. For Article 13 serves as the constitutional basis for oversight not only of the constitutionality of laws, but also of what falls within the purview of this article, namely the constitutions of the states (regions) and the laws throughout the entire country. On one hand. On the other hand, any dispute arising about the conformity of a regional constitution to the federal constitution can be characterized as a dispute between the federal authority and the authority of the region, and thus the Court's jurisdiction extends to judging this matter by virtue of Clause (Fourth) of Article 93 of the Constitution.

Topic Two: The Possibility of the Supreme Federal Court's Jurisdiction over the Constitutionality of Regional Laws

The Iraqi Constitution specifically grants the Supreme Federal Court the authority to determine the constitutionality of laws enacted by the region. Clause (First) of Article 93 of the Constitution establishes the Court's jurisdiction to oversee the constitutionality of laws and regulations in force. Since the term "laws" is stated in general terms, it includes laws enacted by the federal legislative authority and the laws of the region, because Iraq is a federal state in which legislative authority is exercised by both the federal legislative authority and the regional legislative authority. Therefore, the interpretation of the term "laws" should be

3. Who, other than the Supreme Federal Court, is better suited to determine the extent of this contradiction? We do not believe there is anyone more qualified to carry out this task than the Supreme Federal Court, as it is the constitutional arbitration authority in the Iraqi federal system. Therefore, it is the most appropriate body to adjudicate this matter.

made in light of the principles of the federal system. Furthermore, Article 13 of the Constitution clearly states that the federal constitution is the supreme law in Iraq and is binding in all its parts without exception. Clause (Second) of the same article stipulates that no law may be enacted that contradicts the Constitution, and any provision found in regional constitutions or any other legal text that conflicts with it is null and void.

The Supreme Federal Court has exercised its oversight regarding the constitutionality of laws enacted by the region, as seen when it ruled the Oil and Gas Law of the Kurdistan Region No. 22 of 2007 unconstitutional. In its decision, the Court stated: “Therefore, and for all the above reasons, the Supreme Federal Court has decided as follows: 1- To rule the Oil and Gas Law of the Kurdistan Regional Government No. 22 of 2007 unconstitutional and to annul it for contravening the provisions of Articles 110, 111, 112, 115, 121, and 130 of the 2005 Constitution of the Republic of Iraq...”⁴

Topic Three: The Possibility of the Supreme Federal Court’s Jurisdiction over the Constitutionality of Constitutional Amendments

There are two obstacles to determining the possibility of review over constitutional amendments in Iraq: the first is the absence of an explicit constitutional provision granting the Supreme Federal Court the authority to review the constitutionality of amendments; the second is practical—the lack of any constitutional amendment since the 2005 adoption of the constitution, making it difficult to anticipate the legality or illegality of amendments. Nonetheless, it is possible to infer the necessity of such review moving forward, based on the constitution and the fundamental principles on which it rests, as follows:

4. See in this regard the decision of the Supreme Federal Court No. (59/Federal/2012 and its consolidation 110/Federal/2019), published on the Court’s official website at the following link: https://www.iraqfsc.iq/krarat/1/2012/59_fed_2012.pdf

Issue One: The Necessity of Reviewing Constitutional Amendments

Article 1 of the constitution adopted the federal democratic system and stated: “The Republic of Iraq is a single, independent, and fully sovereign federal state, the system of governance of which is republican, parliamentary, and democratic.” These are vital considerations requiring the adoption of judicial review over constitutional amendments. The democratic system requires the rule of law, and the constitution is the supreme legal authority. Its supremacy also requires that the amendment process be regulated to prevent deviation from this supremacy. As for the federal system, it also requires supervision over the amendment process because the federal constitution is, in essence, the outcome of a federal constitutional settlement prior to its adoption. The rigor of constitutional amendment procedures is due to the specificity of the federal system, hence the guarantee of the rights of the components of the federation. The constitution has also imposed substantive and procedural restrictions on the amending power, requiring verification of their adherence.

Some might initially see judicial review of constitutional amendments as a violation of the principle of separation of powers, arguing that ruling an amendment unconstitutional is akin to constitution-making—a power for the original constituent authority, not the judiciary. However, the original constituent power is unrestricted, unlike the derivative amending power, which is a constrained legal entity. Since the amending power operates under substantive and procedural limitations, judicial review is an essential mechanism to enforce those restrictions—it applies the vertical separation between the original constituent power and the derived amending authority ⁵.

5. See Dr. Issam Saeed Al-Abbadi: The extent of the constitutional judiciary’s authority to review constitutional amendments (comparative study), *Journal of the Kuwait International Law College*, year 10, issue 3, 2021, p. 398

Issue Two: The Possibility of the Supreme Federal Court's Jurisdiction over Constitutional Amendment Review

The Supreme Federal Court in Iraq can, by virtue of some constitutional texts and foundations, undertake review of the constitutionality of amendments, for instance:

First: The power of constitutional interpretation. The Supreme Federal Court in Iraq can later on indirectly determine the constitutionality of amendments through its interpretive authority, ensuring that any amended provision is consistent with the constitution. The more stringent amendment procedures are, the higher the likelihood that amendments will be made via judicial interpretation.

Second: The principle of the supremacy of the federal constitution. The preamble of the Iraqi Constitution states that adherence to this Constitution preserves Iraq's unity as a free union—of people, territory, and sovereignty. Article (1) of the Constitution provides that (... and this Constitution guarantees the unity of Iraq), and Article (13) of the Constitution states: (First: This Constitution is the supreme and highest law in Iraq and is binding throughout the entire country without exception. Second: No law may be enacted that contradicts this Constitution, and any provision that appears in regional constitutions or any other legal text that contradicts it is deemed null and void). These provisions mean that all forms of legal activity are subject to the Constitution. Oversight of amendments is thus a guarantee for protecting the Constitution both substantively and procedurally. Substantively, judicial review aims to protect the fundamental principles upon which the Constitution is based and to ensure the unity and coherence of its rules, including the federal system. Procedurally, judicial review acts as an instrument to safeguard the formal and procedural constraints imposed on the amending authority. The amending authority is restricted and defined by the Constitution;

the basis for oversight of constitutional amendments is the principle of supremacy of the federal Constitution. This necessitates that amendments be made in accordance with the provisions of the Constitution, meaning that assessing the constitutionality of amendments is an application of the principle of constitutional supremacy. Therefore, constitutional supremacy obliges all derivative authorities, whether they perform foundational functions such as the power of amendment or other traditional authorities ⁶.

Third: The constitutional duty to protect the federal system. Article 109 states: “The federal authorities shall preserve Iraq’s unity, integrity, independence, sovereignty, and federal democratic system.” As a federal authority and part of the federal judiciary, the Supreme Federal Court is charged with this duty, the most important means of which is the protection of the federal constitution through review of adherence to substantive and procedural restrictions imposed upon the amending authority. Thus, the Court as constitutional arbitrator and protector of the federal constitution may review the observance of these restrictions, though this can only be tested after the Iraqi constitution is amended in the future.

Fourth Topic: The Supreme Federal Court’s Position on Prohibiting the Secession of Federation Units

Achieving constitutional integrity for the federal system requires implementing safeguards to reinforce the unity of the system on one hand and preserve its ability to guarantee diversity on the other. Prohibiting the secession of constituent units in a federal state is consistent with the purpose and nature of federalism, but it is also a major challenge to the constitutional design of federal systems with diverse social makeups, given its intersection with the right to self-determination.

6. See Dr. Issam Saeed Al-Abbadi: previous source, p. p. 400. See Arosi Ahmad and Bin Shahra Al-A’rabi: previous source. 119-120.

Unless constitutionally prohibited, the threat of secession remains a weak point endangering the state's federal structure, as it may be used to obtain concessions that could destabilize the constitutional design. Thus, safeguarding the federal system includes preserving the unity and sovereignty of the federal state.

Despite the novelty of the federal system in Iraq, the constitutional judiciary—represented by the Supreme Federal Court—has played a decisive and important role in establishing the principle of banning secession of the federal system's constituent parts, doing so on two occasions: first in an interpretive opinion, then reiterating it in a judicial ruling of unconstitutionality. Both are presented below:

Issue One: The Interpretive Opinion of the Supreme Federal Court

A request was submitted to the Supreme Federal Court by the Secretary-General of the Council of Ministers by the letter ref. 2/2/035870/5/11/2017 from the Secretariat-General, asking for an interpretation of Article 1 of the Constitution, stating: "The Republic of Iraq is a single, independent, and fully sovereign federal state; the system of governance is republican, parliamentary (representative), and democratic, and this constitution guarantees the unity of Iraq." The request also sought interpretation of two phrases from this Article:

1. Interpretation of the phrase "**a single federal state**": whether any region or province not organized into a region forming part of such a state could decide to secede from it;
2. Interpretation of the phrase "**this constitution guarantees the unity of Iraq**": whether this requires continuance of the state's components listed in Article 116 within a united and indivisible Iraq, preventing any of them from seceding without constitutional provision to that effect.

The Supreme Federal Court issued its ruling No. 122/Federal/2017 on 6

November 2017 by a majority of six to three. It established its jurisdiction based on Clause (Second) of Article 93 of the Iraqi Constitution, which stipulates: “[The Supreme Federal Court is competent to] ... interpret the provisions of the Constitution.” Since the request related to interpretation of a constitutional text, there was no doubt as to jurisdiction.

Upon examining the decision’s rationale, the Court confirmed some principles drawn from Article 1:

First: The substantive meaning of popular approval of the constitution: The Court began by stressing the value of the federal constitution and its legitimacy on the basis that “the majority of the Iraqi people with all its components participated and voted to approve the Constitution and commit to its provisions, including Article 1, the subject of the interpretation request. The Supreme Federal Court finds that this approval and commitment, from ruler and ruled, means Iraq within internationally recognized borders with the components of its federal system stipulated in Article 116—the capital, the regions, the decentralized provinces, and local administrations...” The Court thus affirmed that “the substance of this approval was that Iraq is a single, independent, and fully sovereign federal state, its system republican, parliamentary, and that the provisions of the constitution safeguard Iraq’s unity.”

Second: The duty of federal authorities to preserve the federal system: The Supreme Federal Court confirmed that the Constitution requires, in Article 109, the federal authorities to safeguard Iraq’s unity and federal system. The Court stated: “Article 109 went to require the federal authorities listed in Article 47—the legislative, executive, and judicial authorities—to preserve Iraq’s unity, integrity, independence, sovereignty, and federal democratic system.”

Third: The inadmissibility of secession from the federal state: The Court held that the constitution does not permit any component of the federal system to secede: "...the Supreme Federal Court did not find, after considering all the provisions of the 2005 Constitution of the Republic of Iraq, any text permitting the secession of any of its federal components under the existing provisions, which guarantee Iraq's unity as stipulated in Article 1, the subject of the interpretation request."

Issue Two: The Judicial Ruling on the Unconstitutionality of the Regional Decree Calling for the Kurdistan Secession Referendum

On 9 June 2017, the President of Kurdistan Region issued regional decree No. 106, calling for the holding of the Kurdish independence referendum ⁷.

First: The Supreme Federal Court's position on the referendum decree. The Supreme Federal Court based its jurisdiction on Clause (Third) of Article 93 of the Constitution, which stipulates: "Adjudicating cases arising from the application of federal laws, decisions, regulations, instructions, and procedures issued by the federal authority, and the law guarantees the right of the Council of Ministers, concerned individuals, and others to make a direct appeal to the Court."

However, we do not support the Court's determination of its jurisdiction in reviewing this matter based on Clause (Third) of Article 93 of the Constitution, because this clause pertains to adjudicating cases arising from the application of federal laws, decisions, regulations, instructions, and procedures issued by the federal authority. The referendum and its conduct did not arise from the application of a federal law and were not issued by a federal authority but rather resulted from a decree issued by the President of the Kurdistan Region and carried

7. See: Nicola Degli Esposti: *The 2017 independence referendum and the political economy of Kurdish nationalism in Iraq*, Third World Quarterly, Routledge Taylor & Francis Group, 2021, p. 1

out by a non-federal authority. Therefore, the text of Clause (Fourth) is more consistent with the subject of the case before the Supreme Federal Court on the grounds that the referendum and its decree, in their essence and effects, represent a dispute between the federal government—which called for it not to be held—and the regional government, which insisted on holding it. That is one aspect.

On the other hand, the Supreme Federal Court, in its decision No. 89, 91, 92, 93/Federal/2017 dated 20/11/2017, ruled that: “... Accordingly, the referendum that was held on 25/9/2017 in the Kurdistan Region and in other areas outside it, for the objective for which it was conducted, namely, the independence of the Kurdistan Region and the other areas included in the referendum, has no basis in the Constitution and is in violation of its provisions.” The Court relied on:

1. Its previous interpretive decision No. (122/Federal/2017), in which it interpreted the text of Article (1) of the Constitution, which we have previously discussed.
2. The regional decree regarding the conduct of the referendum contradicts and violates the provisions of Article (1) of the Constitution, which the Supreme Federal Court interpreted above and concluded that “the 2005 Constitution of the Republic of Iraq does not permit the secession of any of the components of its federal system mentioned in Article 116 of the Constitution.”
3. Article (109) of the Constitution obligates the three federal authorities stipulated in Article (47) of the Constitution to preserve the unity, integrity, independence, sovereignty, and federal democratic system of Iraq ⁸.

8. Article 109 of the Constitution states: “The federal authorities shall preserve the unity, integrity, independence, sovereignty, and federal democratic system of Iraq.”

As for Article 47, it states: “The federal authorities consist of the legislative, executive, and judicial authorities, which shall exercise their powers and duties on the basis of the principle of separation of powers.”

Second: The legitimacy of the Kurdistan Region's secession referendum

An examination of the relevant constitutional and legal texts demonstrates the illegitimacy of the referendum for the following reasons:

1. Article 117 clearly defines Kurdistan's status: "This constitution, upon its coming into force, recognizes the region of Kurdistan and its existing authorities as a federal region—no situation for Kurdistan outside this framework can be imagined so long as the constitution is not amended through its specified mechanisms."

2. Articles 120 and 121, which lay out the general frameworks for the region's authorities, do not grant the region or its institutions the right to conduct such a referendum.

3. The constitutional oath stipulated in Article 50 creates a duty to maintain the federal system. Thus, the regional decree and the conduct of the referendum contradict the constitutional oath.

4. The referendum is unconstitutional, for it contravenes the purposes of Article 1 which regards the federal system as one of the constitution's basic foundations. As the federal constitution is, under Article 13, the supreme law—even over the Kurdistan Region—no law can contradict it, let alone a regional decree for a referendum, which therefore must be absolutely null and void.

5. Some have pointed, and they are correct on this, that a constitutional legitimacy crisis exists regarding the issuance of this decree, as it was not issued by the people's actual representative (the regional parliament), but by the president of the region⁹, because Clause (2) of Article (56) of Law No. (1) of 1992 as amended

9. See: Dylan O'Driscoll and Baher Baser: *Independence Referendums and Nationalist Rhetoric: The Kurdistan Region of Iraq*, Third World Quarterly, Routledge Taylor & Francis Group, 2019, p. 3

by Law No. (2) of 2009 (the Law of the Parliament of the Kurdistan Region of Iraq), issued on 8/4/1992, has vested in the Parliament of the Region the authority to decide on vital issues for the people of Kurdistan Iraq and to determine the legal relationship with the central authority. There is no doubt that conducting such a referendum is at the very core of these vital issues for the Kurdish people.

6. Law No. 1 of 2005 on the presidency of Kurdistan does not contain any provision authorizing the president to decree a secession referendum. And even though paragraph (19) of Article (10) of this law grants the president any powers provided by the constitution and the law, we have not found such an authority¹⁰, not even when this constitution recognizes the status of the Kurdistan Region as a region within the federal state of Iraq. The preamble states: (...our choices have united and our will has combined with that of the other components of the Iraqi people and its national forces so that Kurdistan-Iraq may be an autonomous region within the federal state of Iraq, and as an embodiment of this will and in pursuit of these goals, we have adopted this constitution). The draft constitution also considers this status—the region—to be among its fundamental principles, as Article (1) of the draft states that “Kurdistan-Iraq is a region within the federal state of Iraq.” Although Article (7) of the draft affirms the right of the people of Kurdistan to self-determination, this contradicts the federal constitution, which, in Article (109), affirms the authority of the federal authorities to preserve the federal system¹¹. However, in the same article, it states that this right has been exercised, and it has been decided that Kurdistan should be a federal region within Iraq, although this choice is conditioned on the commitment of the “center” to a federal, democratic, parliamentary, and pluralistic system, as stipulated by the federal constitution. But who determines this commitment?

10. See Law on the Presidency of Kurdistan Region Iraq No. 1 of 2005, Article 10

11. For more, see Dr. Saleh Jabri Al-Basais: Secession of Federal State Units, *Al-Muhaqiq Al-Hilli Journal of Legal and Political Sciences*, year 5, issue 2, 2013, pp. 370-371

It is, of course, the Supreme Federal Court, in its capacity as the constitutional arbitration body. Therefore, the region does not have the right to determine whether the federal authority has abided by the constitution and the federal system; rather, it must refer to the mechanism provided by the federal constitution, which serves as the supreme reference according to Article (13) thereof, and the constitution has specified that it is the Supreme Federal Court that is authorized to make such determinations, by any of its jurisdictions mentioned in Article (93). With this jurisdiction, we now move to review the esteemed Supreme Federal Court's decision on the question of the referendum.

Research Identity

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The center aims to utilize the vast amount of potential in Iraq's human resources by organizing programs to prepare and develop promising young people, including leaders capable of proposing, adopting and implementing visions and future plans that advance society and preserve its value-system based on the commitment to a high moral standard and rejection of all types of corruption.

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