

REFERENDUM OF SELF-DETERMINATION

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Abstract- The most democratic and peaceful means to Practice the right of self-determination is the referendum, Which was affirmed by the United Nations General Assembly in its resolution 637 of December 1952 on the right of self-determination: (the states members of the united nations shall recognize and promote realization of the right of self-determination of the peoples of non-self-governing and trust territories who are under their administration and shall facilitate the exercise of this right by the peoples of such territories according to the principles and spirit of the charter of the united nations in regard to each territory and to the freely expressed wishes of the peoples concerned, the wishes of the people being ascertained through plebiscites or other recognized democratic means, preferably under the auspices of the united nations)⁰. A referendum of Self-determination is one of the most important forms of the political referendum, in which the people are chosen between independence and the establishment of their state or to stay with another state.

Keywords- Referendum, Right of Self-Determination, Referendum of Self-Determination, Public International Law.

I. INTRODUCTION

The referendum is one of the manifestations of semi-direct democracy, which is classified into several forms and one of those forms is the political referendum, which is also classified into several types, the most important is the referendum of self-determination.

The importance of this research shows that every people has the right to reach its goal by pursuing democratic and peaceful means and to have opportunities to freely exercise their rights, most notably the right to self-determination.

We tried to shed light on the role and importance of the referendum in the democratic system for the participation of the people in the power to the moment when the people decide to choose their own destiny in such a democratic and peaceful manner, which is called the referendum.

For our research to achieve its objectives, we will distribute it on the following axes:

- 1- Referendum in the democratic system.
- 2- Definition of the referendum and the history of its creation.
- 3- Types of referendum.
- 4- The political referendum.
- 5- Conclusions.

II. REFERENDUM IN THE DEMOCRATIC SYSTEM

Democracy is defined in one of its definitions as "government of the people, by the people, for the people"⁽¹⁾.

Democracy is classified into three types: direct democracy, indirect democracy (democracies) and semi-direct democracy⁽²⁾, because it is now impossible to apply direct democracy which is due to several reasons such as: Increase the geographical area of States And increase the population, Unlike the ancient Greek cities (the place where this kind of democracy arose)⁽³⁾ Which had a small area and a small population, But in contemporary countries it is impossible to apply direct democracy Because not all citizens can be gathered in one place, Even if we assume that it is possible to gather citizens in several places, yet all citizens cannot exercise power, because of the abundance and diversity of state functions, This needs specialization and is not available to all the people. There are also a lot of general issues that need to be kept secret and this needs to be limited number of people present at the meeting or managed by technical institutions and the participation of all citizens leads to the disclosure of secrets and puts the state at risk, therefore the practice of indirect democracy (representative democracy).

In indirect democracy, the people do not exercise power directly, but through its representatives.

For representative democracy (indirect democracy) not to deviate from the idea of true democracy, in the sense of the exercise of power by the people themselves, the idea of indirect democracy (representative democracy) was developed by finding the semi-direct democracy system, which is a middle path between direct democracy and indirect democracy (Representative democracy).

Thus, almost direct democracy is between direct democracy and indirect democracy (representative democracy), Because in direct democracy the people exercise power themselves without intermediaries,

⁽¹⁾ Steven G. Koven, Responsible Governance: A Case Study Approach, M.E. Sharpe, New York, 2008, p. 16.

[http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/637\(VII\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/637(VII)).

⁽²⁾ Sue Vander Hook, Democracy, ABDO publishing company, Minnesota, 2011, p. 66.

⁽³⁾ Cynthia Stokes Brown, Big History: From the Big Bang to the Present, New Press/ORIM, New York, 2007.

while in indirect democracy (representative democracy) the people exercise power through their representatives, but in the semi-direct democracy, the people exercise power through his representatives, but nevertheless the people retain some of the important authorities Under his hand and does not delegate them to his representatives, but that the people themselves make the appropriate decisions on them.

The semi-direct democracy has a variety of manifestations, some agreed upon by specialists and others are not agreed upon. These manifestations are: referendum, objection, proposal, removal of the member of parliament, dissolution of parliament, dismissal of the president.

It is not necessary for all these manifestationsto be practiced in a country so that the state will be an exercise of a semi-direct democracy. It is possible that the state will take one or two of these manifestations to be a state that implements a semi-direct democracy.

The referendum is one of the important manifestations of semi-direct democracy⁽¹⁾.

III. DEFINITION OF THE REFERENDUM AND THE HISTORY OF ITS CREATION

In fact, the word "Referendum" is an old Latin word⁽²⁾ used more frequently in the diplomatic sphere. It referred to the return of representatives of the Swiss cantons working in the federal authority to the Cantonese authorities to exchange views on subjects that were raised by the federal authorities and were supposed to be voted by representatives of the Cantons.

Until now there is no definition of the referendum agreed by all scientists, but that each researcher has a definition of the referendum is different from the definition of others. However, we can definition the referendum as a manifestation of direct democracy, the institution that has the power to conduct the referendum will invite citizens who have the right to vote to express their opinion freely in either of these words (yes) or (no) on a general issue. From this definition, it appears to us that the institution which has the power to hold the referendum may be the legislative authority, the executive authority or a group of citizens, as stated in paragraph (1) of Article 138 of the Swiss Constitution of 2000 that 100,000 citizens who have the right to vote can request to amend the Constitution.

The issues that must be conducted around the referendum must be general, and the result of the

referendum must be (yes) or (no) in the sense that it is not suspended on condition.

We can say that the original location of the referendum was the state of Switzerland⁽³⁾, and then most European countries adopted in the beginning of the last century (twentieth century) and the reasons for this:

A- The spread of democratic currents after the end of World War I and the victory of countries known to adopt democratic systems.

B- Attempts to address the shortcomings of the indirect democratic system (representative democracy).

European countries that adopted the referendum in their constitutions, the German Weimar Constitution of 1919, the Constitution of Austria 1920, the Constitution of Greece 1920, the Constitution of Czechoslovakia 1922 and the Constitution of Spain 1931.

IV. TYPES OF REFERENDUM

The referendum is classified into multiple categories according to different criteria:

I- In terms of content, the referendum is classified as:

A- The constitutional referendum⁽⁴⁾: is a referendum to draft or amend the constitution.

B- The legal referendum⁽⁵⁾: is a referendum to get people's opinion on a law passed by the parliament or likely to be issued.

C- The political referendum.

II- In terms of its application, the referendum is classified into two types:

A- The required referendum⁽⁶⁾: is the referendum regulated by the Constitution, so that a general issue does not become constitutional and legal if the referendum is not conducted around it.

B- The optional referendum⁽⁷⁾: is a referendum which is not regulated by the Constitution, but which the political authority can or will not hold.

III- In terms of the basis of its result the referendum is classified into two types:

A- The mandatory referendum⁽⁸⁾: is the referendum organized in the Constitution and the political authority must do it and take its result.

⁽³⁾ The Oxford Handbook of Comparative Constitutional Law, edited by: Michel Rosenfeld & András Sajó, 1st published, OUP Oxford, 2012, p. 513.

⁽⁴⁾ Stephen Tierney, constitutional referendums (the theory and practice of republican deliberation), 1st published, oxford university press, 2012.

⁽⁵⁾ Kris William Kobach, The referendum: direct democracy in Switzerland, Dartmouth, 1993.

⁽⁶⁾ Referendums Around the World: The Growing Use of Direct Democracy, edited by: David butler & Austin ranney, The AEI Press, 1994.

⁽⁷⁾ Robert luce, Legislative Principles: The History and Theory of Lawmaking by representative government, 2nd printing, the lawbook exchange-ltd, new jersey, 2007.

⁽⁸⁾ Joseph Francis Zimmerman, The Referendum: The People Decide Public Policy, Praeger, 2001.

⁽¹⁾ Thomas Fleiner & Lidija Basta Fleiner, Constitutional Democracy in a Multicultural and Globalised World, Springer Science & Business Media, 2009.

⁽²⁾ Referendums Around the World: The Continued Growth of Direct Democracy, edited by: Matt Qvortrup, 1st published, palgravemacmilan, New York, 2014, p. 2.

B- The consultative referendum⁽¹⁾: is the referendum which is not regulated by the Constitution. And political power, if carried out, they are free to take the its result or not take it. In our opinion, even if the referendum is consultative, the political authority must take its result because it is an expression of the opinion of the people.

IV- In terms of timing, the referendum is classified into two types:

A- The previous referendum⁽²⁾:is the referendum held before a decision is made on an issue.

B- The subsequent referendum⁽³⁾: is the referendum that is held after the issue of a decision on a matter.

But the referendum that we will focus on in this research is the political referendum, one of which is the referendum of self-determination.

V. THE POLITICAL REFERENDUM

The political referendum is the referendum that is held to take the opinion of the people about the receipt of a person for a senior political position or to take the opinion of the people about the policy that this political person wants to adopt.

Thus, the political referendum is every referendum except the constitutional referendum and the legal referendum⁽⁴⁾.

But most of the time the dictatorships use the political referendum in a very bad way, such as the dictatorial regimes that came to power through military coups and use this kind of referendum to convince the internal and external public opinion that the people satisfied with those dictatorships.

As examples, the table below shows how some Arab dictatorships misused the political referendum during the years (1956-1995)⁽⁵⁾:

No.	candidate's name	The date of the referendum	The country	Percentage of votes
1	Jamal Abdulnasser	23-6-1956	Egypt	99.50%
2	Jamal Abdulnasser	15-3-1965	Egypt	99.99%
3	Anwar alSadat	16-10-1970	Egypt	90.40%
4	Jafar Al Numeiri	10-10-1971	Sudan	98.60%
3	Hafez Assad	24-1-1978	Syria	96.60%
6	Hosni Mubarak	13-10-1981	Egypt	98.46%
7	Saddam Hussein	15-10-1995	Iraq	99.96%

⁽¹⁾ The Referendum Experience in Europe, edited by: Michael Gallagher & Pier Vincenzo Uleri, 1st published, macmilan press LTD, New York, 1996.

⁽²⁾ Nationalism, Referendums and Democracy: Voting on Ethnic Issues and Independence, edited by: Matt Qvortrup, 1st published, routledge, New York, 2014.

⁽³⁾ Routledge Handbook of Regionalism & Federalism, edited by: John Loughlin, John Kincaid & Wilfriedswenden, 1st published, Routledge, New York, 2013.

⁽⁴⁾ The Routledge Handbook to Referendums and Direct Democracy, edited by: Laurence Morel & Matt Qvortrup, 1st published, Routledge, New York, 2018.

⁽⁵⁾ For more, visit: <https://en.wikipedia.org>.

The political referendum includes several forms:

A- Political referendum to choose the system of governance.

B- Political referendum for accession to international treaties.

C- Political referendum to increase public expenditure.

D- Political referendum on self-determination.

The self-determination referendum has been prominent since the 20th century, such as the one held in Austria after the First World War to take the opinion of the people of Austria for its integration with Germany. But the importance of this type of referendum emerged clearly after World War II and the founding of the United Nations.

The following is some of the examples of a self-determination referendum after World War II:

A- The referendum in 1954 to allow the people of Sudan to stay with Egypt or independence.

B- The Referendum 1962 in Algeria to take the opinion of the people of Algeria about its survival with France or independence.

C- The referendum in 1977 to allow the people of Djibouti to stay with France or independence.

D- The referendum in 1999 to take the opinion of the people of East Timor between independence or stay with Indusia.

E- The referendum in 2011 to know the opinion of the people of Southern Sudan about staying with Sudan or independence.

It is worth noting that in all these examples, all the peoples whose opinion was taken was the choice (yes) for independence, because there is no one in the whole world who rejects freedom and chooses slavery if his opinion is taken with integrity and neutrality.

The referendum of Self-determination for Iraqi Kurdistan was held on 25 September 2017, with results showing approximately 93.25% of votes cast in favor of independence⁽⁶⁾.

VI. CONCLUSIONS

A- The referendum is one of the most important manifestations of the semi-direct democratic system.

B- Until now there is no definition agreed upon by all scientists to the referendum, but every researcher has a definition of the referendum is different from others.

C- The referendum is classified into different forms and types based on different criteria.

D- Self-determination referendum One of the most important forms of political referendum, which is conducted to take the opinion of the people between independence and the establishment of his own state or to stay with another state.

⁽⁶⁾ https://en.wikipedia.org/wiki/2017_Iraqi_Kurdistan_independence_referendum.

REFERENCES

- [1] Cynthia Stokes Brown, *Big History: From the Big Bang to the Present*, New Press/ORIM, New York, 2007.
- [2] [http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/637\(VII\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/637(VII)).
- [3] <https://en.wikipedia.org>.
- [4] https://en.wikipedia.org/wiki/2017_Iraqi_Kurdistan_independence_referendum.
- [5] Joseph Francis Zimmerman, *The Referendum: The People Decide Public Policy*, Praeger, 2001.
- [6] Kris William Kobach, *The referendum: direct democracy in Switzerland*, Dartmouth, 1993.
- [7] *Nationalism, Referendums and Democracy: Voting on Ethnic Issues and Independence*, edited by: Matt Qvortrup, 1st published, routledge, New York, 2014.
- [8] *Referendums Around the World: The Continued Growth of Direct Democracy*, edited by: Matt Qvortrup, 1st published, palgravemacmilan, New York, 2014.
- [9] *Referendums Around the World: The Growing Use of Direct Democracy*, edited by: David butler & Austin ranney, The AEI Press, 1994.
- [10] Robert luce, *Legislative Principles: The History and Theory of Lawmaking by representative government*, 2nd printing, the lawbook exchange-ltd, new jersey, 2007.
- [11] *Routledge Handbook of Regionalism & Federalism*, edited by: John Loughlin, John Kincaid & Wilfriedswenden, 1st published, Routledge, New York, 2013.
- [12] Stephen Tierney, *constitutional referendums (the theory and practice of republican deliberation)*, 1st published, oxford university press, 2012.
- [13] Steven G. Koven, *Responsible Governance: A Case Study Approach*, M.E. Sharpe, New York, 2008.
- [14] Sue Vander Hook, *Democracy*, ABDO publishing company, Minnesota, 2011.
- [15] *The Oxford Handbook of Comparative Constitutional Law*, edited by: Michel Rosenfeld & András Sajó, 1st published, OUP Oxford, 2012.
- [16] *The Referendum Experience in Europe*, edited by: Michael Gallagher & Pier Vincenzo Uleri, 1st published, macmilan press LTD, New York, 1996.
- [17] *The Routledge Handbook to Referendums and Direct Democracy*, edited by: Laurence Morel & Matt Qvortrup, 1st published, Routledge, New York, 2018.
- [18] Thomas Fleiner & Lidija Basta Fleiner, *Constitutional Democracy in a Multicultural and Globalised World*, Springer Science & Business Media, 2009.

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