

ABD'NİN 2003 İRAK İŞGALİNDEN SONRA OLUŞTURULAN 2005 İRAK ANAYASASINDA İRAK TÜRKMENLERİNİN YASAL KONUMU

Soner DOĞAN¹

Öz

Bu çalışma; Irak Türkmenlerinin 2005 Irak Anayasası'ndaki yasal konumunu, ortaklaşıcı teori ve nitel metodoloji kullanarak analiz edecektir. Teorik bir çerçeve olarak, Lijphart'ın ortaklıkçı teorisindeki; iktidar paylaşımı, büyük koalisyon, özerklik ve azınlık vetosu terimleri kullanılacaktır. İşgal sonrası devlet inşası ile ilgili literatürün altında yatan ve cevap aranan önemli ve ampirik bir soru; bölünmüş toplumlarda ne tür bir anayasanın barış ve demokrasi umudu sunduğudur. Irak'ın gelecekteki istikrarı ve refahının anahtarı, nihayetinde güvenliği artırmak için verilen günlük mücadeleye değil, yeni ve uygulanabilir bir anayasanın tasarımına bağlıdır. Bu nedenle, Irak Türkmenlerinin Irak'ın geleceğinde önemli bir rolü vardır. Bu yazının nihai amaçlarından birisi de Irak Türkmenlerinin önceki Irak anayasalarındaki haklarını incelemektir.

Anahtar Kelimeler

Ortaklıkçı Demokrasi
Irak Türkmenleri
2005 Irak Anayasası

Makale Hakkında

Araştırma Makalesi
Gönderim Tarihi: 09.06.2019
Kabul Tarihi: 28.10.2019
E-Yayın Tarihi: 18.11.2019

IRAQI TURKMEN'S LEGAL POSITION IN THE 2005 IRAQI CONSTITUTIONAFTER THE US OCCUPIED IRAQ IN 2003

Abstract

This study will analyse the Iraqi Turkmen legal position to the 2005 Iraq Constitution by using Consociationalism theory and qualitative methodology. As a theoretical framework, Lijphart's four conditions of; power-sharing, the grand coalition, autonomy and minority veto will be used. A significant and empirical question underlying the literature on post-occupation state building is what kind of constitution offers the prospect for peace and democracy in divided societies. The key to Iraq's future stability and prosperity ultimately depends not on the daily struggle to improve security, but on the design of a new and applicable constitution. Hence, the Iraqi Turkmen have a significant role in Iraq's future. Also, one of the final aims of this paper is to demonstrate the rights of Iraqi Turkmen within previous Iraqi constitutions.

Keywords

Iraqi Turkmen,
consociational democracy,
the 2005 Iraq's constitutions

Article Info

Research Article
Received: 09.06.2019
Accepted: 28.10.2019
Online Published: 18.11.2019

¹ PhD Candidate at Marmara University, sonerdgn@gmail.com, ORCID: 0000-0002-8696-3136

Introduction

When the United State of America occupied Iraq in 2003, it succeeded in demolishing Saddam Hussein's Baathist regime with an aim to establish a democratic political system. To attempt to create a democratic and fair political system in Iraq was difficult for the USA because Iraq had never experienced democracy or had a democratic society. The Saddam regime was one of dictatorship, who governed with tribes, ethnic groups over a long duration. The establishment of a democratic political system involves a holistic integration of cultural, ethnic and religious bodies. Hence, it is important for constitutional writers and politicians to implement consociational theory for pluralization of society. Consociational democracy is based on Lijphart's theory which explains power-sharing order in deeply divided ethnics society. It is a model of democratic governance that transforms politically differentiated cultures and groups into a stable democracy (Lijphart, 2008:30). However, the democratic system has not provided equal rights among different society in Iraq. For example, the Shiites have been given too much power in the federal government, the Kurds are happy because they have taken regional authority, while the Sunnis rights were neglected in current political orders.

On the other hand, although Iraqi Turkmen are the third largest ethnic group in Iraq, their rights have been ignored significantly. According to the United Nations data (2018), currently the population of Iraq is approximately 40 million, and Iraqi Turkmen are a community of around 3-3.5 million (%9-10), predominantly living in the Iraqi provinces of Kirkuk, Baghdad, Mosul and Diya (Saatci, 2015:91). In fact, Iraqi Turkmen have a broad background in Iraq's history. When the Turkmens came to Iraq in 760(A.C), they had administered Iraq until the end of World War I. Especially during the Ottoman Empire, Iraqi Turkmen possessed an important role in Iraq. After the First World War, when the Ottoman Empire lost power in Iraq, the Iraqi Turkmen lost their priority and became a second-class citizen. King Faysal who was the first king of Iraq, did not want to share his authority and he saw Turkmens as a threat for his state, and his policy continued until 2012. After Iraq was occupied, the US tried to establish a new democratic system, but Iraqi Turkmen were not represented equally such as Kurds or Shiites. Iraqi Turkmen also faced political and ethnic violence within both terms of office. When Iraq's constitution was written, Brendan O'Leary and John McGarry predicted that new constitution would solve many problems among minorities, especially towards power sharing in Iraq. However, in practicality it failed and led to many problems, for example, many Sunnis or Turkmens were politically violated, and they decided to boycott the general election. This study will analyse the Iraqi Turkmen legal position to the 2005 Iraq Constitution by using Consociationalism theory, and qualitative methodology. As a theoretical framework, Lijphart's four conditions of; power-sharing, the grand coalition, autonomy and minority veto will be used. Furthermore, one of the final aims of this paper is to demonstrate the rights of Iraqi Turkmen within previous Iraqi constitutions.

1. Consociationalism: A Theoretical Background

The theory of consociational is developed by Arend Lijphart and other scholars. It is also, one of the most effective theories in comparative political science. Its key concept is divided societies, which are a region such as religious, ethnic and linguistic (McGarry, J &

O'Leary, B 2004:1). It is a model of democratic governance that transforms politically differentiated cultures and groups into a stable democracy (Lijphart, 2008:25). The consociational theory depends on the Dutch experience of controlling 'plural conflict' from 1917 to 1967. According to Lijphart (1980:25-30), one of the most critical components for consociational democracy is a grand coalition in the divided society which is the government of the political leaders. Many thinkers who study divided societies and constitutional engineering agree that deep social divisions status is an important issue for democracy and its tools. Hence, democratic government is more difficult to establish and maintain in divided countries than in homogeneous countries. Also, most experts agree that the problem of ethnic and other divisions is greater in non-democratic countries than in well-established democracies and that such divisions present a significant problem to democratisation in the twenty-first century. It has been agreed that democracies within divided societies come about with two principles: power-sharing and segmental authority. Briefly, power-sharing indicates the participation of representatives of all-important community groups in the process of decision making. Group autonomy implies that each group has independent authority for domestic works such as culture, education and sports activities in their region. In this sense, these two terms are often referred to as consociational democracy (Lijphard, 2004:96-97).

Lijphart emphasises four main requirements towards divided societies in consociationalism theory: a grand coalition by political leaders all parties in the divided society, mutual veto, autonomy for the segments of society, and minority proportionality (Lijphart, 1980:25). The consociational theory has three main arguments, as shown in the below figure. Firstly, elite collaboration is needed in the divided society for democracy to come about. Secondly, consociational democracy can protect smaller groups in the political arena due to elite's cooperation. And the final argument is the peace process which leads to elite cooperation. Each of these arguments have an important role in decreasing conflict between divided societies. Briefly, these components, are drivers for conflict resolution in a divided society, in terms of sharing power, minority rights, and participation of government (Sullivan, 2005:79).

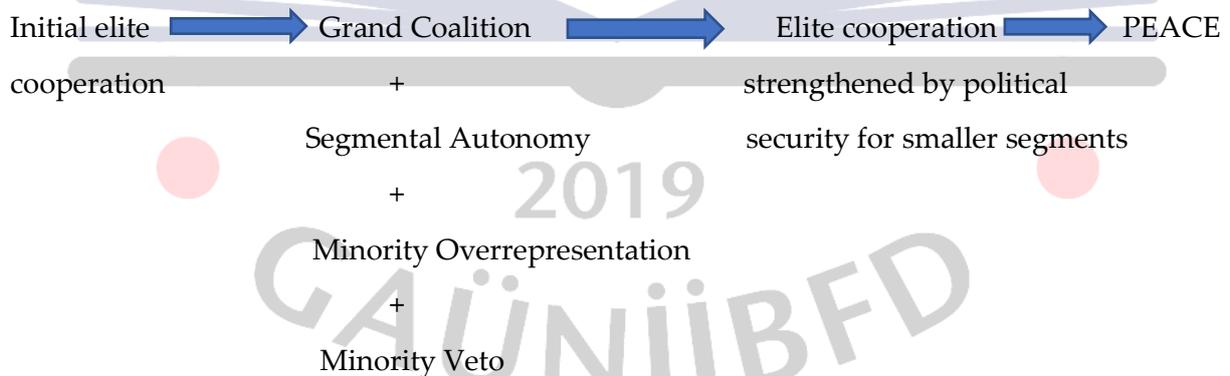


Figure 1: Lijphart's theory of consociational democracy, and its phases (Sullivan, 2005:79)

Grand coalition is the first and most critical component of consociational democracy for Lijphart. This view is widely shared as Lijphart stated "a grand coalition of the political leaders of all significant segments of the plural society" (Lijphard, 1980:25). The grand coalition can take different structures. Lijphart points out that the optimal tool would be the participation of leaders of all segments in the grand coalition council with the parliamentary system based on proportionality. Yet, the grand coalition is also conceivable through a general council with an advisory duty, or in a presidential system (Sullivan, 2005:79-80). The certain structure of the grand coalition is not the most important thing; rather, "the essential characteristic of the grand coalition is not so much any particular institutional arrangement as the participation by the leaders of all significant segments in governing a plural society" (Lijphart, 1980:31). Lijphard emphasises the collaboration of elites in shaping a grand coalition system, and he implies that from their realisation of the dangers of violence in a continually fragmented society which leads them to "consciously and rationally take remedial actions" (Lijphart, 1980:14). The necessary implication of the grand coalition opinion is that the final success of a consociational system depends on the behaviour of the elites in different sectors. As a critical approach to constitutional theory was made by Jurg Steiner. Lijphart emphasises that plural societies constitute to the universe of facts which the consociational theory should be implemented to. According to Steiner, this definition is unclear, and he accentuates that "how exactly to distinguish plural from non-plural societies (Steiner, 1981:339). Expanding the theory from plural to non-plural societies would resolve this problematic issue of limiting the creation of issues. Also, grand coalitions cannot work as described within the theory structure because each group has different interests. Hence, the political system can congest easily, and to find a political solution is difficult such as in Lebanon, Iraq.

The second component of consociational democracy is regional/segmental autonomy. The concept of autonomy is not limited to minorities because it can be applied to majorities too. Autonomy can be regional which is represented in federalism or non-regionally represented in cultural autonomy (O'Leary, 2008:56-57). In this case, where cultural or identity societies are compact, federalism should apply; for instance, the Kurdish region in Iraq (Lijphart, 1980:42). If the cultural society is moved in a different part of the country, cultural autonomy should be applied. In such a case, the specific institution will be appointed to take decisions that are noted to be critically exclusive to society (Lijphart, 1980:43). The segmental autonomy has aimed to provide political security, particularly to small segments, hence appeasing fears and allowing for collaboration at a high level. This means that the opinion that "good social fences may make good political neighbours" (Lijphard, 1979:504). If there are different groups in society for representing, there can be less conflict among segments. Lijphard claims that segmental cleavages should be recognised, and segments allowed autonomously to contribute towards stable democracy (Lijphard, 1979:505). Therefore, there should be communication between the elites and the populace.

The third segment is a minority veto in consociationalism democracy. Lijphart defines the minority veto as "the ultimate weapon that minorities need to protect their vital interests" (Lijphart, 1980:37). The minority veto can prevent decisions which are unacceptable for minority societies. On the other hand, Lijphart concedes that if the minority veto is utilised often, this case could be dangerous for consociational democracy. However, he emphasises

that the minority veto provides a guarantee for minority rights. The minority veto does not need to be declared in a constitution, yet it can be an unofficial and unwritten comprehension (Lijphart, 1980:37-38). Hence, political stability and security which is derived from the minority veto is important. Lijphart gives the example of Lebanon in which different religious and sectarian groups were represented proportionally, emphasises that in the model of partnership democracy, groups accept each other without any exclusion (Lijphart, 2008:29-30). He believes that any group cannot act against the interests of the other group, thus avoiding political crises as a result of mutual consent and cooperation of the country's resources. On the other hand, consociational democracy has a disadvantage, if we consider consociational democracy as a consensus democracy. Each minority has a veto right, and this situation leads to an ineffective political process. The search for reconciliation, which is generally decided by qualified majority method, can lead to serious time loss. Hence, the simple majority can be preferred when making decisions.

The fourth component is proportionality in consociational democracy. This means that the opinion of political and elite collaboration may increase stability. Also, the state resources should be allocated for each minority according to the relative rate of the whole population comprised by each segment of a divided society. Lijphart describes proportionality as being "a general principle of consociational democracy that applies not only to the electoral system but also to the composition of the public service and the allocation of public funds" (Lijphart, 2000:15). Proportionality is one of the significant factors to be applied in divided societies because it makes easy the cultural and political rivalry for the state resources. Therefore, all state resources can be shared according to the rate of minorities. This is one example of a fair and acceptable democratic system. Also, proportionality can be partially performed, both formal political institutions, and it can be practised to all level of state institutions (O'Leary, 2008:52). For example, parity is applied either at the government level such as Belgium or at an all-state level such as Lebanon.

2. Iraqi Turkmen's Historical Background in Iraq Constitutions

After the end of the Ottoman Empire, Britain declared the mandate government in Iraq. The state of Iraq was governed by the British government until 1932, and that year it gained independence from Britain. The interim Iraq's constitution was accepted in 1920, and it consisted of Arabs, Kurds and Turkmens society. According to this constitution (article 14), Iraqi Turkmen had education right with their mother tongue (Kocsoy, 1991:128). After that the first Iraqi constitution was declared in 1925 which was titled al-Qanoon al-Asasi al-Iraq (The Basic Law of the Iraq State). It contained 123 articles and continued until the military coup in 1958. In the constitution (article 16) ethnic groups were given the right to open schools in their mother tongue. According to article 17, the official language in Iraq was Arabic, but there were exceptions which were determined by the Law on Local Languages dated 1931 and numbered 74. The law indicated that in Kirkuk and Erbil where Iraqi Turkmen live, the rights to education within their mother tongue was present. However, these rights and guarantees were shelved by the governments that came later (Terzioglu, 2006:163). In practice, while the Kurds, Christians and Jews were granted this right, the Turkmens could not benefit from the right to seek education in their mother tongue. Also, in 1932, the Iraqi state took a decision to do education in Arabic within Turkmen schools (al-Hirmizi, 2008:18).

In 1932 the Iraqi Kingdom declared a declaration after the British mandate ended in Iraq and became a member of the League of Nations. This declaration, published by Prime Minister Nuri Said, was accepted as the basic law of Iraq and it was stated that no law, regulation could be in contradiction with the articles contained in the declaration text (Saatci, 2017:202-203). In this case, each minority had won broad rights. Iraqi Turkmen's rights were protected and guaranteed. However, with the increase of Arab nationalist movements, the decisions were not applied for Iraqi Turkmen between 1936 and 1958. Hence, Iraqi Turkmen cultural and social organisations, radio broadcasters, and education with mother tongue were banned by the Iraq government (Kayili,2008:33).

On 26 July 1958, a military coup took place in Iraq and the interim constitution was declared by the military coup office. According to this constitution (Article 3), Iraq was composed only of two nations i.e. Arabs and Kurds. The other nations were described as minorities. It also stated that in Article 9 of the Constitution, all citizens are equal ahead of the law. They also are equal in official duties and responsibilities. The constitution would not allow any discrimination for race, religion, languages against any ethnic groups in Iraq. Although Iraqi Turkmen are one of the most dominant societies in Iraq, their name were not indicated among main societies such as Kurds or Arabs. They were only addressed as a general minority (Ertugrul, 2006:141).

In 1968, when General Hasan el-Bekir overthrew the regime of Arif, the Ba'ath government began. In 1970, Hasan el-Bekir became President, and Saddam Hussein appointed his vice president. Besides, with a constitutional amendment made in this period, the authority to open private schools in the main languages was taken under state monopoly and the rights granted to minorities were withdrawn (Koprulu, 1996:67-68).

With the decree of the Revolution Command Council in 1970, it was stated Turkish could be taught in primary schools where Iraqi Turkmen population were, and a Turkmen Education Directorate may be established under the Ministry of Education in Iraq. The reason behind the Ba'ath administration's decision to take these determinations is that the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in 1965 under the UN framework was put into force in 1969 (OHCHR, 1965). The reason behind the Ba'ath administration's decision to take these determinations is that the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in 1965 under the UN framework was put into force in 1969 (OHCHR, 1965). The Iraq government approved this decision in 1970. Iraq state had provided some good conditions for Iraqi Turkmen on paper, but it never became reality. In 1978, an agreement was signed between the Baghdad government and Kurds. According to the agreement, both sides accepted that Iraq state was formed by two nation as Arabs and Kurds. Moreover, Iraqi Turkmen was not ever mentioned in this agreement, and their rights not given by the Iraqi government (Mengu, 2012:121-124).

In 2003, the Iraqi Interim Governing Council was formed by the United States. This structure had become an institutional identity for preparing Iraq for elections and making a new constitution. This council consisted of 13 Shiites, 5 Sunni-Arabs, 5 Kurds, 1 Iraqi Turkmen and 1 Assyrian-Christian. However, there was no democratic case in this institution (Kayili, 2008). Lewis Paul Bremer was appointed as a governor in Iraq by the USA. He had the right

to reject all constitutional work. Iraqi people objected to this situation. Moreover, the USA did not give fair quota for representatives to each society. Iraqi Turkmen are the third ethnicity in Iraq, but they had just one seat in the Governing Council (Katzman & Humud, 2016:3).

In the following periods, the Iraqi Provisional Administration Council for 25 persons met on 29 July 2003, and they formed the 9-person Presidential Council. The Presidential Commission included 5 Shiite Arabs, 2 Sunni-Arabs and 2 Kurds. There were no Iraqi Turkmen representation in the commission. In 2004, two Iraqi Turkmen attended the Constitutional Commission of 50 people. However, the efforts of these two people could not prevent the formation of wrong attitudes and thoughts about Iraqi Turkmen (Jawad, 2013:8-9).

After the US invasion of Iraq and the collapse of Saddam's regime, the interim coalition administration was established. According to the Iraqi State Interim Administration Law (article 4), which came into force in this period and ended on December 31, 2005, Iraq is a federal state based on a geographical basis, not on the basis of race, ethnicity, nationality and sect. (Iraq Temporary Law, 2004).

Although it was accepted that Iraq is a country composed of different ethnicities, the Arab people are the main factor (article 7/b); Arabic and Kurdish were accepted as official languages. Public education institutions (with Syriac and Armenian) have been guaranteed the right to education in Turkmen or private education institutions in any other language (Article 9). As seen in all legal documents accepted since the establishment of Iraq, the Interim Constitution did not place Iraqi Turkmen in a position other than minority status (Rivkin and Casey, 2005:8-10). The provisions of the Interim Constitution on Iraqi Turkmen have been included in the new constitution, as seen below, without any enlargement of the rights of the Turkmens.

2.1. 2005 Iraq's Constitution and Iraqi Turkmen

The current constitution was approved by a referendum which has indicated in 2004 Iraq interim constitution (article 61) on 15 October 2005. In the process of making a new Iraq constitution, Iraqi Turkmen were marginalized. This section of the article will analyse which constitution articles provides any right for Iraqi Turkmen.

2.1.1. According to the 2005 Constitution; The State Structure¹

According to Article 1 of the new Constitution, Iraq is a federal state, which has a republic and parliamentary democracy. The federal state of Iraq has been formed as regions, governorates, with a decentralised capital and local administrations (Article, 116). However, the regional government cannot oppose the Iraqi constitution. In this context, the Iraq constitution has legitimized the 1992 Kurdistan Constitution as a federal government. In addition to recognizing the rights of the Kurds to have their territories, and they also accepted Kurdish as an official language in all of Iraq (not only in the Kurdish region) but also in Arabic, in proportion to their population (article 4/1). In the Kurdish region, Arabic and Kurdish are used in federal organisations and institutions (art. 4/3). This means that only Kurdish will be

¹for further information: https://www.constituteproject.org/constitution/Iraq_2005.pdf?lang=en

used in non-federal units. In this respect, any city whereby no federal government is present, Kurdish is used as an official language. The Iraqi Constitution has not provided any federal or city for Iraqi Turkmen. Iraqi Turkmen will depend on the legal order in the units where they live in (region, province, local government).

When we look at the 1990 Iraq Constitution, it was stated that the Iraqi people were based on Arab and Kurdish elements (article 5/b) and that Iraq was clearly a part of the Arab nation. However, according to Article 3 of the current constitution, Iraq is a multi-ethnic, multi-religious and multi-sectarian country. It also emphasises that Iraq is a member of the Arab League and a part of the Islamic world. In contrast to these two provisions in the constitutions, it is possible to say that Iraq gradually changes from being a national state dominated by Arab elements to a multicultural identity (Al-Hirmizi, 2008:196). Hence, this constitution was much better than the previous constitutions for Iraqi Turkmen because consociational democracy has been more applied than previous constitutions.

3. The Constitutional Position and Rights of Iraqi Turkmen

As it was mentioned previously; all citizens are equal before law without discrimination based on gender, race, ethnicity, nationality, origin, colour, religion, sect, belief or opinion, or economic or social status (Article 14). It is good for Iraqi Turkmen, but Iraqi Turkmen are a third largest ethnic group in Iraq. Hence, the Iraqi constitution should provide autonomy such as Iraqi Kurds. Iraqi Turkmen will benefit from some individual rights in the category of positive rights granted to minorities, which have not even reached the cultural autonomy dimension. These rights, as can be seen below, are regulated in relation to the use of native language and the use of official language in the context of linguistic rights. It is also stated in the Constitution that the administrative, political, cultural and educational rights of the elements such as Turkmen, Syriac and Armenian are guaranteed, and this will be regulated by law (article 4). In terms of the exercise of political rights, ethnic and religious groups in Iraq can engage in political activities with their own identities. For example, in the 2005 elections, Iraqi Turkmen won 9 seats in the parliament with 4% of the vote (O'Sullivan & al-Saiedi, 2014:12).

According to the article 4/1 of the constitution, Arabic and Kurdish are the official languages of Iraq. In addition, the right to education in mother tongue such as Turkmen, Assyrian and Armenian are provided within the framework of both public and private education. The constitution does not limit any languages. Any region or province may accept a local language as an additional official language if it is decided by a majority of its population in a general referendum (Article 4/5). As can be seen, it is theoretically possible to make the official language with the referendum in the region or provinces where Turkish is not the official language. The articles 20 and 21 of the Iraq Constitution, political rights are included. These articles provide representation and decision-making mechanism for minorities. However, although the constitution guarantees this, it has left the implementation of this provision to the law. The legislative can regulate to content as requested due to no constitutional limits.

However, as it will be discussed below, it is seen that some of the collective rights of minorities have been recognised in relation to the Kurdish region, although not in the whole

of Iraq. According to the constitution of the Kurdish region, where Iraqi Turkmen live as a majority, the people of this region are Kurds and Turkmen, Assyrian, Chaldean and Arab national minorities. It is stated in the Constitution that the rights of these minorities are recognised (article 4). According to Article 7/1 of the Constitution, the Kurdish language will be the official language in this region. Federal and regional authorities and official communications will be held in Arabic and Kurdish (article,7/2). Arabic teaching will be compulsory in the region (article, 7/3). For Turkmen culture besides Kurdish, the Turkish language will be considered as the language of education (article, 7/4). The representation of the national minorities, Turkmen, Assyrian and Chaldeans will be taken into consideration in the establishment of the Council of Ministers of the Kurdish Region (article, 49). Similarly, the fair representation of national minorities will be respected in the elections of the Kurdish Regional Assembly (art. 26/2). As can be seen, the Kurdish regional constitutional provides many rights for minority such as Iraqi Turkmen, but these right does not be utilised because of historical competition between Iraqi Turkmen and Kurds (Kayılı, 2008:72-73).

In order to continue consociational democracy, natural resources should be shared equally among minorities. Articles 111/112 mention natural resources such as “oil and gas are owned by all the people of Iraq in the regions and governorates”. These resources will be shared fairly in the regions which were unjustly deprived of them by the former regime, and the regions that were damaged afterwards in a way that ensures balanced development in different areas of the country, and this shall be regulated by law (Dixon, 2011:315-317). However, this rule has not been applied yet due to different interests of minority groups. Hence, Iraqi Turkmen have not been provided any benefit where they live such as Kirkuk, Tuz khurmatu, Mosul. As it has been seen, Lijphart’s consociational theory cannot guarantees in regard to the ground coalition.

According to the article 39/1 of the constitution, everyone can participate in political parties and associations, and these rights are guaranteed by law. Iraqi Turkmen have many political parties in Iraq. They can establish any party or associations freely (Ertugrul, 2006:151). In this context, the consociational theory works in Iraqi society, in terms of grand coalitions. However, many political issues have been ignored by the government. For example, in 2015, the ministry of human rights, which was represented by Iraqi Turkmen, was removed from the cabinet by Prime Minister al-Abadi. After that, Iraqi Turkmen protested but, but this did not bring results in anyway. According to Lijphart (2008), this issue can trigger instability in political and social life. This article agrees with Lijphart’s opinion because Iraq’s political and social order is fragile and sensitive, and minority proportionality can be violated. These decisions can lead to more grave situations.

Conclusion

Consociational democracy partly works in divided societies. It provides many benefits both political and cultural rights. The 2005 Iraq constitution is established on consociational democracy. As Lijphart indicates, which close to the democracy model, the 2005 Iraq constitution has stated a parliamentary and federal system with an electoral system based on the relative representation (Dixon, 2011:316). The minority society in Iraq is not only divided but also, they cannot resolve the problems amongst them. In order to successfully establish the

consociational democracy in Iraq, first of all, all minority groups should stop conflicting and should take the decision to peacefully live together. Hence, the 2005 Iraq constitution provides equal and fair rights for each group. However, although its compatible with consociational democracy's principles, it is seen that in Iraq, there is serious conflict between society in terms of political, religion and sectarian dynamics. That means that consociational democracy is fragile.

The concept of the nation-state, which was tried in Iraq, is generally seen to have been structured on the basis of a particular group, sect, ideology, and political party. Hence, other communities resisting against this policy, are faced with pressure from the central government. Iraqi Turkmen have faced this pressure in history nowadays. They cannot benefit equally and fairly from Iraq's institutions. However, after 2012 they have been recognised as the third nationality in the Iraqi constitution. This case is important to both Iraqi society and in order to continue consociational democracy. Consociational democracy has been interpreted as a classic means to guarantee the rights of minority due to its necessity of a 'grand coalition' and 'minority veto'. In Iraq, the Turkmen minority constitute about 10-15 per cent of the population and are, hence, an important minority. Many serious inhumane offences being committed against the Turkmen constitutional/civil rights. Although the Iraqi Turkmen have constitutional rights, they cannot use freely because of competition other minorities. In any free and democratic country, all the ethnic groups should be given representation, commensurate with their proportion in the whole population, both in the central government and in the parliament, however, this is no the case in present Iraq. For example, there is always a struggle between the Kurds, Arabs and Turkmen for Kirkuk administration. Whereas the 2005 Iraqi constitution, which it bases on Consociational democracy, has provided equal rights amongst minorities, Both the Iraqi government and Kurds try to ignore Turkmen's rights in Kirkuk.



2019

GAÜNİİBFD

Reference List

- Al-Hirmizi, E., (2008). The Turkmen Reality in Iraq. Kerkük Vakfi, İstanbul.
- Dixon, P., (2011). Is Consociational Theory the Answer to Global Conflict? From the Netherlands to Northern Ireland and Iraq. *Political Studies Review*, Vol:9:309-322.
- Ertuğrul, U., (2006). Irak Türkleri ve Türkiye. Kerkuk Vakfi Yayinlari, İstanbul.
- 2005 Iraq Constitution (2005).
https://www.constituteproject.org/constitution/Iraq_2005.pdf?lang=en (20.02.2019).
- Iraq Temporary Law (2004). <http://www.au.af.mil/au/awc/awcgate/iraq/tal.htm> (01.03.2019).
- Jawad, S., (2013). The Iraqi constitution: structural flaws and political implications.
<http://www.lse.ac.uk/middleEastCentre/publications/PaperSeries/SaadJawad.pdf> (24.02.2019).
- Kayili, A., (2008). The Iraqi Turkmen 1921-2005. Kerkuk Vakfi Yayinlari, Istanbul.
- Katzman, K., & Humud, C. (2016). Iraq: Politics and Governance, Congressional Research Service Report, <https://fas.org/sgp/crs/mideast/RS21968.pdf> (20.04.2019).
- Kocsoy, Ş., (1991). Irak Türkleri ve Türk-Irak İlişkileri 1932-1963, Boğaziçi Yayınevi, İstanbul.
- Koprulu, Z., (1996). Irak'ta Türk Varlığı. Gazi University, Ankara.
- Lijphart, A., (2008). Thinking About Democracy: Power Sharing and Majority Rule in Theory and Practice. Routledge, New York.
- Lijphart, A., (1979). Consociation and Federation: Conceptual and Empirical Links, *Canadian Journal of Political Science* 12(3):499-515.
- Lijphart, A., (1980). Democracy in Plural Societies: A Comparative Exploration. Yale University Press, London.
- Lijphart, A., (2004). Constitutional Design for Divided Societies. *Journal of Democracy*, 15(2):96-109.
- Lijphart, A., (2000). Power-sharing and Group Autonomy in the 1990s and 21st Century. Constitutional Design 2000 Conference. University of California, California.
http://fopre.pbworks.com/f/Lijphart_Power,+Sharing.pdf (5.03.2019).
- Mengü, C. (2012). ABD- Türkiye-Irak Üçgeninde Türkmen Meselesi. Yalın Yayıncılık, İstanbul.
- McGarry, J & O'Leary, B., (2004). The Northern Ireland Conflict: Consociational Engagements. Oxford University Press, Oxford.
- OHCHR, (1965). International Convention on the Elimination of All Forms of Racial Discrimination,
<https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx> (03.03.2019).

O'Leary, B., (2008). The Logics of Power-Sharing, Consociation and Pluralist Federations. Settling Self-Determination Disputes: Complex Power-Sharing in Theory and Practice, M. Weller and M. Barbara (ed). Martinus Nijhoff Publishers, Leiden, pp. 47-58.

Rivkin & Casey., (2005). The New Iraq Constitution,
<https://www.heritage.org/node/17139/print-display> (10.03.2019).

Saatci, S., (2017). Tarihten Günümüze Irak Türkmenleri. Ötüken Yayınları, İstanbul.

Saatci, S., (2015). Irak Türkmen Boylari: Oymaklar ve Yerleşme Bölgeleri. Ötüken Yayınları, İstanbul.

Sullivan, D., (2005). The Missing Pillars: A Look at the Failure of Peace in Burundi through the Lens of Arend Lijphart's Theory of Consociational Democracy. The Journal of Modern African Studies, 43(1):75-95.

Steiner, J., (1981). The Consociational Theory and Beyond. Comparative Politics, 13(3):339-354.

Terzioğlu, S.S., (2006). Tarihsel Süreç Çerçevesinde 2005 Irak Anayasasına göre Irak Türklerinin Hukuksal Durumu. Akademik Orta Doğu Dergisi, 1(1):159-176.

The United Nation, (2018). Iraq General Information. <http://data.un.org/en/iso/iq.html> (05.04.2019)

Q'Sullivan & Al-Saiedi., (2014). Choosing an Electoral System Iraq's three Electoral Experiments, Their Results, and Their Political Implications. <https://www.belfercenter.org/sites/default/files/legacy/files/MOSRA%20Iraq%20Electoral%20Paper%20Working%20Draft%204%2029%2014.pdf> (01.03.2019).



2019

GAÜNİİBFD