



Legal Regulation of the Minister's Accountability under the Caretaker Government in Accordance with the Iraqi Constitution of 2005

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Abstract

The caretaker government is, in fact, a transitional government, that is to say, a government that exists for a limited period of time, until the election of a new government. This assumption has been confirmed by the political reality in Iraq, where the interim government is responsible for ensuring the continuity of public facilities and institutions, as well as the regular conduct of daily affairs. It is of the utmost importance that the government in question, which has been established on a provisional basis, adheres to the principles of conciliation and continuity of the state. The overarching objective of these principles is to ensure the continuity of public life in accordance with the aforementioned principles. Consequently, the government in question is obliged to remain in power until such time as it resigns. The powers of the government in question are limited to the conduct of ordinary and urgent business. In fact, it is limited to exercising only the necessary jurisdiction and continuing the regular and steady performance of public utilities throughout the country. It does not have any political involvement, that is to say, it is not permitted to deviate from the scope that has been defined for it. Furthermore, it must maintain the basic and important principle of legitimacy. There may be an expansion in the use of the powers granted to this government under exceptional circumstances. In addition, the public interests of the state, as represented by its security and its international obligations towards other countries, must be safeguarded. The primary issue of the study is the absence of an integrated legal system that validates the actions of the government in question, given the lack of clarity surrounding the constitutional texts that refer to the existence of a caretaker government without delineating its scope of authority. This ambiguity presents a challenge in determining the precise scope of the government's responsibilities. In order to ascertain whether the powers of the caretaker government and the accountability of the minister or ministers under the caretaker government can be allocated to all competencies, or whether exceptions exist indicating that this government exercises the competencies granted to it by the Constitution, it is necessary to address the legislative omission that has

occurred. This must be done as soon as possible in order to preserve the integrity of the government. The objective of this study is to elucidate the concept of a caretaker government, its legal status, the powers exercised by it during the caretaker period, its legal foundation, and the position of the judiciary with respect to the decisions issued by the caretaker government during its tenure.

Keywords

Day-To-Day Management, Interim Government, Limited Government, Day-To-Day Administration, Transitional Government

Introduction

1. The significance of the study is as follows:

The topic of our study is considered one of the most significant and pressing issues of our time due to its tangible impact, particularly given that Iraq has previously undergone this phase on two occasions. However, there has been a notable absence of legislative action by the Iraqi legislature in addressing this issue. Furthermore, the topic has not received sufficient attention from researchers and scholars, resulting in a dearth of legal resources and scientific theses on the matter.

2. The Objective of the Study

The objective of this study is to ascertain the concept of a caretaker government, its legal status, the powers exercised by this government in the ordinary and exceptional circumstances during the period of its tenure, and the position of the Iraqi legislature on this matter.

3. The Problem of the Study can be Defined as Follows:

The principal issue is the absence of an integrated legal system, which is corroborated by the work of the caretaker government. This is despite the existence of constitutional texts that refer to the government's involvement in specific procedures. However, there is no indication of the limits of its work or the powers granted to it under any circumstances. This is particularly relevant in the context of the establishment of the government, as there is no constitutional or legislative text that delineates the scope of its work. Instead, we have only found jurisprudence and judicial jurisprudence. This is a significant challenge that requires the development of effective treatments adopted by the Iraqi legislator in accordance with the Iraqi constitution of 2005.

4. Scope and Hypothesis of the Study

The scope of the study is delineated by our analysis of the constitutional texts that regulate the functioning of the caretaker government.

5. The Structure of the Study

This study is structured around a preliminary introduction, three distinct sections of discussion, and a concluding summary. The initial section will present an explanation of the concept of a caretaker government and its legal basis. The second section will examine a number of cases in which a caretaker government has been established. The third section will analyse the powers granted to a caretaker government and the extent of parliamentary control over it. In the case that the Iraqi parliament grants confidence to the caretaker government, and in the case that the parliament is dissolved, we will elucidate the mechanism by which accountability is achieved. In the conclusion, we will present the main findings of our study and suggest avenues for further investigation.

Methods

The study employs a qualitative analytical approach, focusing on constitutional, legislative, and jurisprudential analyses. This method is suitable for exploring the intricate legal and constitutional dimensions of the caretaker government as outlined in the Iraqi Constitution of 2005.

Data Sources

Primary Sources:

- Constitutional texts, including the Iraqi Constitution of 2005.
- Relevant Iraqi laws, such as the Rules of Procedure of the Iraqi Council of Representatives.
- Judicial rulings, particularly those by the Federal Supreme Court of Iraq.

Secondary Sources:

- Legal literature and research articles.
- Comparative studies from other parliamentary systems.
- References to historical cases, such as the resignation of the Iraqi Prime Minister in 2019 and the caretaker government of Mustafa Al-Kadhimi in 2021.

Research Scope

The study analyzes the constitutional and legislative framework governing caretaker governments.

- It examines the legal responsibilities and limitations of ministers under such governments.
- The research explores practical applications and judicial oversight in the context of Iraqi governance.

Methodological Steps

1. Legal and Jurisprudential Review:

- Examining constitutional provisions to identify gaps and ambiguities regarding caretaker governments.
- Reviewing judicial interpretations, particularly those by the Federal Supreme Court, to clarify the scope of powers and responsibilities.

2. Comparative Analysis:

- Comparing Iraq's approach to caretaker governments with that of other parliamentary systems, focusing on legal principles and practical outcomes.

3. Case Studies:

- Analyzing real-world examples from Iraq, including instances of government resignations and parliamentary dissolutions, to understand the practical implications of the constitutional framework.

4. Critical Evaluation:

- Identifying legislative deficiencies and proposing amendments to ensure clarity and functionality in the legal framework for caretaker governments.

Analytical Tools

- Textual analysis of constitutional provisions and legal texts.
- Contextual interpretation of judicial decisions to derive legal principles.
- Cross-referencing with international practices to identify best practices and potential improvements.

Ethical Considerations

- The study adheres to academic standards, ensuring transparency and proper citation of all sources.
- It respects the political and cultural context of Iraqi governance while offering constructive criticism for legislative reforms.

Results and Discussions

Chapter One : Caretaker Government

In the field of law, the concept of a caretaker government is of great importance, particularly given the lack of regulation on this issue in the Constitution of the Republic of Iraq of 2005. This is particularly relevant in the context of the current parliamentary system, where the term 'caretaker government' is used in accordance with the provisions set out in Article 61/VIII/D of the Constitution of the Republic of Iraq, 2005.

In light of the above, the term 'caretaker government' has been employed in accordance with the stipulations set forth in Article (61/VIII/D) of the Constitution of the Republic of Iraq of 2005 ⁽¹⁾. Consequently, this study will be divided into two sections. The first section will address the concept of the caretaker government, while the second section will examine the legal regulation of the aforementioned concept in accordance with the Constitution of the Republic of Iraq of 2005.

First Requirement: The Concept of Caretaker Government

A caretaker government is defined as 'a government transformed from a regular government enjoying the full powers granted to it by the constitution, to a government that defines its powers and exercises them within the limits that ensure the continuity of government work within the administrative limits'. This is a consequence of the constitutional practices that emerge from the political reality of the current situation, as well as the most common so-called conflict of positions. One potential outcome of this is the resignation of the government and the subsequent election of a new parliament, a new president, and a new government.

In accordance with the aforementioned definition, a government with delineated powers for a designated period (temporary and transitional) is a crucial element in the provision of public utilities, particularly in the context of the formation of a new government. In accordance with the Rules of Procedure of the Iraqi Council of Ministers, the term is defined as 'conducting day-to-day affairs, taking decisions and actions that cannot be postponed' ⁽¹⁾.

Furthermore, it is defined as 'a government tasked with performing normal administrative work, i.e., such work does not create any obligations for the government that follows it' ⁽²⁾. It is also defined as 'a government with restricted powers, the scope of whose work is limited to the normal day-to-day operations that facilitate the continued regularity of public facilities within state institutions'⁽³⁾. It is also defined as the normal daily and exceptional acts that the government exercises in order to run its public facilities ⁽⁴⁾.

The term 'caretaker government' is defined by researchers as 'the government that is in between two stages'. The first of these stages can be considered the resigned or de facto government, while the second stage is characterised by the formation of a new government with the objective of regularising the operation of public services.

From what is presented above, it is evident that the caretaker government represents a transitional authority, established in response to the prevailing political circumstances. This interim administration is responsible for ensuring the continued operation of essential public

services and institutions ⁽⁵⁾.

The term "caretaker government" is defined by the researcher as "a government that is underpowered for the purposes of managing matters at certain times, such as a transitional phase, elections, or an emergency circumstance when a new government is not established or is delayed, and this government does not have the right to decide important and fateful matters."

The country may experience a period of significant political upheaval, namely the dissolution of parliament. In such circumstances, a caretaker government can provide a practical solution by assuming responsibility for the daily management of affairs in order to ensure the continuity of essential public services.

In the case that the newly elected government is granted the confidence of the newly constituted parliament, it shall proceed directly to the completion of the constitutional procedures ⁽¹⁾, including the taking of the constitutional oath. If this is not the case, the President of the Republic shall appoint another candidate within fifteen days, provided that the Council of Ministers nominates the members of its ministries within a maximum of thirty days from the date of assignment ⁽²⁾.

Upon closer examination of Article 76 of the Iraqi Constitution of 2005, it becomes evident that the Iraqi constitutional legislator did not specify, mention, or refer to the period for submitting the ministerial programme. This raises the question of what the fate of the ministry is in such a scenario.

In the case that the ministry fails to win the confidence of parliament, which has occurred on numerous occasions in Iraq, the President of the Republic is empowered to assign another candidate within the aforementioned period. This raises the question of whether this constitutes a legislative deficiency that the Iraqi legislator should have avoided and addressed with greater urgency, given the serious implications.

It is evident that the concept of a caretaker government is inherently problematic and that the legislative deficiency in this regard must be rectified. The necessary measures must be taken to ensure the continuity of essential public services and to address them in the most optimal manner.

Second Requirement: The Legal Basis of the Caretaker Government

The desire of numerous countries to retain certain powers of the outgoing government until the new government is formed and assumes control of executive authority is a reflection of the fundamental principle of public law, namely the continuity of public services ⁽¹⁾.

The existence of the caretaker government is founded upon two significant legal tenets. The first emphasises the administrative-regulatory nature of public utilities, which are characterised by regularity and continuity of operation. The second is of a political nature and relates to the lack of political responsibility of the government, which may result in the government losing the confidence of Parliament. This will be demonstrated through the following two sections:

A. Sustainability of Public Utilities

The basis of the government confirms the continuity of the performance of public utilities on a regular and steady basis. This is an important constitutional principle and the basic services they provide, for the purpose of their regular operation. The opposite would be a failure to satisfy the basic needs of individuals. In the case of any damage, this can result in a disruption to the order. The principle of continuity of the public utility includes the continuity of the activity of the public utility without any interruption ⁽²⁾, as well as the continuity of the

possibility of access to its beneficiaries. This ensures the proper functioning of society and the state. It is also pertinent to consider the situation in Iraq.

B. Lack of Political Responsibility of the Government

The concept of political responsibility serves as a fundamental tenet within the parliamentary system, providing a crucial balance between the two distinct poles of this system: the ministry and parliament ⁽¹⁾. Parliament holds the authority to dismiss the ministry, or in other words, the minister, in instances where the ministry fails to fulfil its fundamental responsibilities or deviates from its intended goals. Conversely, the ministry possesses a parallel mechanism of action, namely the dissolution of parliament and its subsequent termination before the legally prescribed time limit has elapsed. It is evident that a government that resigns lacks the confidence of parliament. This implies that parliament has not endorsed the government's political responsibility. Consequently, there must be a legal basis for this government to justify its continued existence and role in state administration. In a mixed parliamentary system, it is recognised that the government is only entitled to exercise the powers granted to it when it enjoys the confidence of the parliament and is accountable to it. Furthermore, it is subject to the oversight of the parliament. The confidence is derived from the majority of the parliament.

This is stipulated in parliamentary or mixed Systems. The majority of constitutions that govern these systems, including the Iraqi Constitution, stipulate that the President of the Republic, or more accurately, the President of the State, is responsible for appointing the Prime Minister and forming the government, either independently or in collaboration with the President of the State. Once the Prime Minister has been selected and the members of their respective ministries have been appointed, they are required to submit a request to Parliament for approval. Additionally, the Prime Minister must demonstrate that they have the support necessary to exercise their constitutional functions effectively.

In the case that it is not granted parliamentary confidence, the government becomes resigned. This occurred in Iraq prior to the presidency of Mr. Mustafa al-Kadhimi. Consequently, it is not accountable, as the jurisprudence indicates that a resigned government is considered to have ceased to exist due to a lack of confidence from Parliament. Furthermore, the government is not able to function unless it is granted parliamentary confidence. In this case, the entire government is excused from carrying out its functions until such time as it has obtained parliamentary confidence in the ministerial programme. As such, "with this, it cannot be represented and questioned before him" ⁽²⁾. This renders it impossible for the entire government to carry out its functions before obtaining parliamentary confidence on the ministerial programme. In the case that parliament refuses to grant confidence to the Prime Minister and his ministers, the President of the Republic is empowered to select an alternative individual to form a new government. The constitutional custom elucidated the legal basis for the existence of a resigning government, or a caretaker government. This is based on the premise that each time the President of the State resigns, the government is assigned to conduct its business.

Consequently, it postulated a new constitutional custom, which is founded on two pivotal elements: the material element of habit, which is based on acts or behaviours issued by the parliament or the President of the Republic on a regular basis without any interruption or cessation. The second element is that of obligation generated in the governing bodies, as previously mentioned. It is our contention that it is difficult for the two elements to be present

in a caretaker government, given that this results in actions by the resigned government during the period of ministerial crisis that are contradictory and lack clarity. In light of the aforementioned, it can be said that the caretaker government is exercising its powers in a manner that can be perceived as ensuring the minimum continuity of state facilities and performing only essential and necessary functions in accordance with the Constitution. Furthermore, it can be observed that other countries have undergone a similar period of dissolving parliament and the caretaker ministry in order to overcome the challenges presented by such a transition. This approach has been employed in order to maintain the continuity of public facilities and the performance of their assigned duties, thereby preserving their permanence and the continued fulfilment of their obligations in accordance with the provisions of the law.

Chapter Two : Situations that the Caretaker Government Goes through

This principle is one of the basic matters that make the ministry a caretaker government. This includes the end of the electoral cycle set for the House of Representatives. Once the term of the parliamentary session expires, the ministry is considered resigned. This can also be considered resigned. This matter is considered valid until new or early elections are held. These elections result in the formation of a new elected parliament. There are several cases that the caretaker government goes through. This is what I will explain through two requirements as follows :

First Requirement: Resignation of the Ministry

The resignation of the Ministry is deemed to have occurred on the date that the resignation is accepted by the President of the State. However, the resignation may subsequently be rejected. In the case of rejection, the Ministry continues to fulfil the duties outlined in the constitutional terms of reference. This requirement will be used to elucidate the circumstances under which the government may resign, whether at its own discretion or through the withdrawal or withdrawal of confidence by the parliament. In such an instance, the government is deemed to have resigned through the following two sections.

A. Resignation of the Government on its Own Initiative

In the case that the competent authority submits a resignation request to the President of the Republic, namely upon the conclusion of the legislative term, the Head of State, in accordance with customary practice, may resign from office. This may be done through the support of the parliamentary majority, or the Head of State may seek to strengthen its position in Parliament. Alternatively, the Head of State may resign to avoid any potential conflicts with Parliament. Finally, the Head of State may resign due to a perception that it may lose its parliamentary confidence.

It is not sufficient for the government to announce its intention to resign; a formal decision must be made by the President of the Republic or the President of the State to accept the resignation and assign responsibility for managing daily affairs. Furthermore, the decision of the President of the State to form a new government is considered a confirmation of the previous decision ⁽¹⁾. In this case, popular pressure and public opinion movements prompted the government to transition to a caretaker government, effectively extending the period between the resignation and the election of a new prime minister.

Following the dissolution of the Iraqi parliament on 6 October 2021, a caretaker government was formed ⁽²⁾. The government is only able to exercise its constitutional powers once it has been granted parliamentary confidence and the President of the Republic has

accepted the resignation of the previous government, as occurred with the government of Mr Adel Abdul Mahdi. Once a resignation has been accepted, it cannot be retracted.

In examining the Iraqi constitutional legislator's actions in the Law on Limiting the Mandate of the President of the Republic and the Prime Minister of Iraq No. (8) of 2013, it becomes evident that they have indicated the cases in which the government becomes a caretaker government. These include the resignation of the Prime Minister or the Council of Ministers itself, without any reference to the reasons for the resignation. This suggests that the Iraqi legislator has implicitly referred to the government's spontaneous resignation, as they have not specified the reasons for the resignation

B. Withdrawal of Confidence

The withdrawal of confidence represents one of the supervisory acts preceding the work of the ministry. In other words, members of parliament are entitled to vote on the formation of the government or the ministerial cabinet and its ministerial programme. This is with a view to ascertaining the extent to which the latter will ensure continuity for all state facilities. Indeed, the ministerial formation in question may be imposed by the constitution through the confidence granted to them by the President of the Republic.

It cannot be considered an implicit withholding of confidence in the members of the ministry or the ministerial cabinet through the President of the Republic, given that he is the President of the Council of Ministers. Therefore, the silence on the fate of the ministry can be interpreted as a withholding of confidence in it, which is a legislative deficiency that must be addressed as soon as possible.

One consequence of the withdrawal of confidence is the resignation of the ministry by a republican decree issued by the President of the State. In the case that no parliamentary confidence is granted, an order is issued to form a new ministry. Furthermore, in the case that the new ministerial cabinet also receives a no-confidence vote, the President of the Republic calls for early elections or dissolves Parliament, due to the fact that it has failed to grant confidence to the new cabinet

The Iraqi constitutional legislator has stipulated that the Prime Minister, who is responsible for forming the government, must obtain the granting of parliamentary confidence. This is a prerequisite for the formation of the ministerial government. Furthermore, the Prime Minister is required to present the names of the ministers, that is to say, the ministerial cabinets which are chosen to continue forming the government, to the Iraqi Council of Representatives. In addition, the Prime Minister must present the ministerial platform to the Council of Representatives. Once this has been done, the parliamentary confidence is granted to each of the ministers individually and by an absolute majority ⁽²⁾. Article 76/V of the 2005 Iraqi Constitution stipulates that the President of the Republic shall assign another candidate to form a ministry within a period of fifteen days.

In the case that the newly elected government is granted parliamentary confidence, as stipulated by the Iraqi Constitution, it will proceed to take the constitutional oath and assume the powers granted to it by the Constitution ⁽⁴⁾. Conversely, in the case that the government does not receive parliamentary confidence, it will be denied confidence directly, which will then require the President of the Republic to assign another person, specifically another candidate, to form the cabinet within the period specified by the Iraqi Constitution, as indicated by the text of Article (76/V).

It is evident that the Iraqi constitutional legislator did not stipulate a specific period for

the submission of the ministerial programme. The primary consideration is the fate of the ministry in the case that the House of Representatives does not agree to grant confidence in the submitted ministerial programme. The question thus arises as to whether the ministry can be considered to have resigned and thus become a caretaker government. The Iraqi Constitution is explicitly silent on this matter. Upon examination of the constitutional texts and a review of constitutional texts in general, it can be concluded that if the ministry fails to gain parliamentary confidence, the President of the Republic assigns another candidate to form the ministry within the following period. In the case of a motion of no confidence being tabled against the government, the matter is referred to the parliamentary committee for investigation. This committee is tasked with examining the allegations made against the government and, if necessary, recommending the withdrawal of confidence from the minister or the entire ministry. Once the committee has completed its work, it presents its findings to Parliament, which then decides on the appropriate course of action. The committee responsible for this matter presents the report to Parliament, which then takes the necessary measures. This may result in the avoidance of any shortcomings in the work of the ministries, ministry, or minister. This is one of the parliamentary oversight functions carried out by the Iraqi Parliament, in addition to its legislative role.

It is widely acknowledged that the withdrawal of confidence represents a contemporary oversight of the work of the ministry in accordance with the constitution. In the case that the ministerial confidence is lost from parliament, the minister in question is obliged to resign. This represents the most important means of political accountability towards the government, as exercised by parliament. In the case of a vote of no confidence in the government, the ministry in question will resign from the date of the vote onwards. This is a common occurrence in coalition governments, which often result in early parliamentary elections. Following these elections, a new government or coalition government may be formed.

The Iraqi Constitution of 2005 addresses the withdrawal of confidence from the Minister or the Prime Minister, as outlined in Article 61/VIII/A ⁽¹⁾. Additionally, it stipulates the issuance of a decision to withdraw confidence from the Minister, which takes effect from the day the Council approves the aforementioned decision. Consequently, any subsequent decisions made by the Minister are considered null and void, lacking legal validity. In the absence of a duly appointed minister, no decision pertaining to the affairs of the ministry may be taken. Consequently, any action taken by the minister subsequent to the issuance of the no-confidence decision is considered null and void ⁽²⁾ unless the provisions of Articles (61/VIII/D and 64/II) are duly observed

Second Requirement: The limits of the powers of the caretaker government

This may be taken against the Iraqi constitutional legislator, with regard to limiting the jurisdiction of the caretaker government of daily affairs, rather than the idea of daily affairs. The latter is focused on the performance of routine daily work and the necessary works imposed by reality to continue the continuity of the work of the state organs and the regular and steady functioning of the public utility. This is a crucial consideration at the present time, given that the government in question is considered to have resigned. The actions of the President of the State in conducting ordinary business or daily or ongoing matters until the new government is formed, and in determining the content of ongoing matters that this government undertakes, are of great importance.

A caretaker government is responsible for a range of duties, including the management of daily operations and the maintenance of public facilities. In the absence of a permanent government, the caretaker government assumes the role of ensuring the regular and stable functioning of public institutions. Additionally, it intervenes in exceptional circumstances that threaten the safety of the state, in accordance with the law ⁽¹⁾

It is noteworthy that the Federal Supreme Court of Iraq has made reference to us in its judgement No. 121/Federal/2022. In this judgement, the Court elucidated the powers of the caretaker government's daily work and expounded upon the concept as enshrined in the Iraqi Constitution of 2005 ⁽²⁾

The definition of these powers granted to the caretaker government is related to the idea of ongoing business. However, it is not clear, and remains so far an unclear concept. Furthermore, it is not evident which behaviours fall within the boundaries drawn for it and can be considered outside this concept. Finally, the judicial control over the caretaker government is also unclear. These issues will be explained through the two following sections:

A. Powers of Caretaker Government under Normal Circumstances

These powers encompass the acts and decisions of an ordinary, daily, or routine nature that are contingent on each government to undertake them. They are necessary for the proper functioning of public facilities in a regular and consistent manner. To ensure the continuity of the public facility, the administration must issue a number of decisions that ensure the continuity of the facility. For example, purchasing raw materials for an industrial facility or purchasing stationery for the Ministry of Education facility or distributing the monthly salaries of the employees of this or that facility or collecting payment for the service or good provided by some facilities. The various departments in these facilities must implement the routine acts.

In other words, the ongoing works are those that continue on a regular basis in a normal manner and are automatically attended to by the different administrative bodies. The work of the ministry, that is to say the ministers, is limited to putting their signatures on them, as the ongoing works are those that, if not done continuously and daily, will disrupt the work of the facility and do not require a new initiative from the government ⁽¹⁾

In other words, these are the daily and familiar actions of the administrative apparatus. These are the routine actions that are carried out at the lower levels of the administrative hierarchy ⁽¹⁾, which do not contain any political dimension. They are the actions that the continuity of the public service requires the government to take.

In order to fully recognise these actions, it is necessary to divide them into those that fall within the constitutional framework and those that fall within the administrative framework.

The initial consideration is as follows:

Those acts which fall within the constitutional framework are as follows:

It is evident that the concept of conducting current affairs is inextricably linked to the domain of public utilities, with the objective of ensuring the applicability of administrative law. In this context, such acts are regarded as administrative in nature, whereas those undertaken by the government in a constitutional capacity do not fall within the purview of current affairs, except in instances of necessity or exceptional circumstances.

The distinction between governmental acts of a constitutional nature and those that

constitute ongoing business, coupled with the political motivation behind the former, has led to the conclusion that the latter fall outside the jurisdiction of the caretaker government. In some countries, this jurisdiction is limited to the act of affixing one's signature to the side of the head of state, with some jurisprudence even questioning the legitimacy of this signature ⁽²⁾

In light of the aforementioned considerations, it can be posited that acts of government of a constitutional nature frequently fall beyond the purview of a caretaker government. In some countries that require the signature of the Prime Minister on the decrees issued by the President of the Republic pursuant to the rule of neighbouring signature, and when the President of the State wishes to object to a specific draft law referred to him by Parliament and the failure to answer it for a certain period of time is considered an implicit approval of this project, here the Prime Minister must enable the President of the State to exercise his right to object and not refrain from the neighbouring signature on the pretext that it is within the scope of business operations only, but if there is no time period for the answer from the President of the State, there is no need here to sign, and the Prime Minister may refrain from this and refer this work to the new head of the government

1) *The proposal to amend the Constitution is presented*

This competence is regarded as one of the crucial and grave responsibilities that must be discharged by a fully empowered government, rather than an underpowered one. This work is not within the purview of the caretaker government or the government of daily affairs. However, there have been instances where this has not been the case, as evidenced by the experience in Belgium. While this may provide a contrasting perspective, the prevailing and correct opinion is that this category of work is beyond the jurisdiction of the caretaker government

2) *Proposing draft legislation.*

The drafting of legislation is a significant responsibility of any government. It is a right that has consistently been granted to the executive authority, represented by the Council of Ministers ⁽²⁾, in parliamentary constitutions. This right falls outside the jurisdiction of a caretaker government, as it may involve political characteristics that are distinct from the responsibilities of daily governance. However, this task may be delegated to a fully empowered government if the necessity for legislation is driven by the actual reality of the situation

3) *The issuance of regulatory decisions that include amendments to legislative texts.*

It is acknowledged that these decisions are issued in implementation of laws. However, there are instances where a discretionary decision by the administration is made to issue regulations in order to address deficiencies in legislative texts. These decisions may serve to complement or explain the legislative text. In such cases, the question arises as to whether the process of issuing such decisions is considered within the competence of the government in matters of day-to-day affairs.

In order to answer this question, it is necessary to refer to the authorisation issued by the legislative authority, namely the House of Representatives. In the case that the legislative authority has granted the administration the authority to amend certain provisions of the law through regulatory decisions, this sector falls outside the scope of current affairs, given that such authorisation is only granted to a government

that has the confidence of the parliament and full competence. The transfer of legislative authority to the government may occur through the direct constitution, as exemplified by independent regulations such as those pertaining to administrative control or the establishment and organisation of public utilities. This power is typically reserved for a fully empowered government due to the significance of these matters. Furthermore, they are inconsistent with the content of everyday affairs. Conversely, regulations issued by the government during exceptional circumstances fall within the scope of everyday affairs. This is because the legislator has granted the government this competence in order to face exceptional circumstances and ensure the survival of the state and the continuation of life in a regular manner.

4) *Dissolution of Parliament*

The government's decision to request the dissolution of parliament is regarded as a significant and politically charged act. Given the unanimous consensus on this matter, it is understandable that this issue falls beyond the scope of current affairs.

It is also noteworthy that the Iraqi constitutional legislator, in accordance with the 2005 Constitution, has referred to a number of powers enjoyed by the full government. This raises the question of whether the government retains these powers or part of them when it assumes the role of a caretaker government. In order to gain an understanding of the powers that the Council of Ministers is entitled to exercise, it is necessary to refer to the text of Article (80) of the 2005 Constitution, which stipulates that 'The Council of Ministers shall exercise the following powers :

- Firstly: The government is responsible for planning and implementing the state's general policy and general plans, as well as for supervising the work of ministries and bodies that are not associated with a ministry.
- Secondly: the Council of Ministers is responsible for proposing draft legislation
- Thirdly: the Council of Ministers is responsible for issuing regulations, instructions and decisions to implement laws
- Fourthly: the Council of Ministers is responsible for preparing the draft general budget, final account and development plans
- Fifthly: The recommendation to the House of Representatives for the appointment of deputy ministers, ambassadors and those with special grades, the army chief of staff and his aides, those with the rank of division commander and above, the head of the National Intelligence Agency and the heads of security agencies
- Sixthly: the power to negotiate and sign international treaties and agreements, or to sign them on behalf of the state, is vested in the President. On closer examination of the aforementioned powers, it becomes evident that they are beyond the scope of ongoing business operations due to their inherent significance. These powers can only be exercised by a fully empowered government, with the exception of the matter addressed in the initial portion of the aforementioned article. The phrase "supervising the work of the ministries and non-ministerial bodies" implies that the Cabinet oversees the proper functioning of state facilities to ensure the continuity of essential services. This responsibility is inherent to the government, regardless of its scope of authority

Secondly: The following actions fall within the administrative framework. The administration (government) bears responsibility for a number of administrative tasks,

including the management of administrative facilities, the implementation of administrative control, the maintenance of security, health and public tranquillity. It is evident that the issuance of administrative decisions, both individual and regulatory, represents a crucial means of achieving the objectives of the administration. Consequently, it is pertinent to inquire as to whether these decisions and the possibility of issuing them fall within the jurisdiction of the caretaker government.

In terms of individual decisions, it is generally accepted that they can be regarded as part of the current business, given their comparatively lesser importance in comparison to regulatory decisions. Nevertheless, there are certain individual decisions of significant consequence that are not amenable to inclusion within the purview of the current business. This pertains, for instance, to decisions pertaining to the appointment of specific positions that are imbued with political dimensions.

It would be erroneous to include these decisions within the remit of the business. However, there are certain occurrences in Belgium that may warrant a different interpretation ⁽¹⁾. In contrast, individual decisions are regarded as falling within the scope of ongoing business operations. This is exemplified by the decision to authorise the granting of a concession, which is considered to be a matter of ongoing business, whereas the decision to grant a concession is regarded as being outside the framework of conducting ongoing business due to its inherent seriousness.

Furthermore, there are certain acts and decisions that, by their very nature, fall outside the scope of the conduct of current business. This is because they contain clear political dimensions. One example of this is decisions that modify the status of public institutions and utilities. These cannot be within the scope of the conduct of routine matters carried out by public utilities. They are also not of the nature of urgent matters. This is because they require study and scrutiny. This is something that the caretaker government is unable to undertake.

Similarly, the Belgian Council of State ⁽³⁾ has also endorsed this approach. Furthermore, decisions that modify or infringe upon rights recognized by law ⁽⁴⁾ are also beyond the purview of the caretaker government, due to the gravity of such decisions, which may be politically motivated and thus best left to a fully competent government.

B. The Power of a Caretaker Government in Exceptional Circumstance

It is well established that exceptional circumstances, such as war, natural disasters, or economic crises, necessitate a departure from the conventional rules of legitimacy. In such instances, the scope of exceptional legitimacy is invoked, affording the administration greater freedom of action and expanding its capacity to issue decisions without the necessity of seeking approval from the legislative authority.

This is consistent with the majority of the world's constitutions, which include provisions that afford the administration a broad scope of freedom of action during exceptional circumstances ⁽¹⁾. The advent of exceptional circumstances may occur under the aegis of a caretaker government. Such circumstances are not compatible with the narrow mandate of the government, which includes the conduct of current business only.

In this context, it is pertinent to inquire whether the measures and decisions undertaken

by the government in response to exceptional circumstances fall within the purview of its ongoing responsibilities.

The case law on this matter is divided. One school of thought holds that urgent matters and actions required by exceptional circumstances are to be considered as part of the ongoing business.

An alternative perspective is that the actions undertaken by the government in response to exceptional circumstances are not regarded as part of its routine business. Rather, they are pursued by the government because they may not result in an increase in its political accountability during the exceptional circumstances. Furthermore, the concept of routine business excludes actions that may lead to an increase in political accountability.

It is our contention that the divergence of opinion between the aforementioned perspectives represents a mere formal discrepancy, as they are two facets of a unified concept. In the context of exceptional circumstances, the government is endowed with exceptional powers, irrespective of whether these are perceived to fall within the purview of its daily affairs or beyond its scope of authority. It is precisely the exceptional circumstances that enable the government to exercise these exceptional powers

In regard to the range of actions that the government may undertake in response to exceptional circumstances, it is ultimately at the discretion of the government in question, provided that the actions taken are consistent with the exceptional circumstances and the state of necessity or danger.

In the constitutional sphere, referendums may be held, draft legislation may be proposed, and the dissolution of parliament may be requested ⁽²⁾. In the administrative sphere, the administration may issue regulatory decisions, appointment decisions with a political dimension, important economic decisions, and other decisions required to address exceptional circumstances or the state of necessity.

C. Oversight of the Caretaker Government

The oversight imposed on the actions of this government is analogous to that exercised on the actions of the ordinary government. However, there are two key differences. Firstly, when exercising oversight over a caretaker government, the exceptional circumstances of the government must be taken into account. Secondly, the government lacks legal authority, either because it has resigned, been dismissed or been forced to resign. In such cases, the oversight penalty is fulfilled in advance.

In light of the aforementioned considerations, this chapter will be divided into three sections. The first section addresses the oversight of the caretaker government and the parliamentary oversight as well. The second section examines judicial oversight, and the final section analyses the oversight of public opinion.

The first requirement is the parliamentary oversight of the caretaker government

The function of parliamentary oversight is to monitor the work of the government, in addition to the legislative function. This is because parliamentary oversight is considered one of the outcomes of the principle of separation of powers, which is adopted by any parliamentary system.

If this oversight is necessary, what is its scope and how should it be exercised? In order to answer this question, we will divide this requirement into three sections. The first section addresses parliamentary questions, the second addresses the submission of an interrogation and confidence in the government, and the third addresses the means of oversight when

parliament is dissolved. These three sections will then be summarised under the title "Appreciation of Parliamentary Oversight".

The first section is concerned with the submission of queries to the minister via the House of Representatives.

A parliamentary question is a means of enabling members of parliament to ascertain information about matters of which they are unaware, or to draw the government's attention to a matter related to the work of state institutions in general. This represents a direct relationship between the questioner and the official, with the questioner alone being permitted to comment on the government's response if he is not satisfied with it, or if he finds it incomplete or ambiguous.

Questions serve as a valuable source of information for Parliament, enabling it to address issues raised by constituents ⁽²⁾. The question must be directed to the minister responsible for the relevant ministry or duties, as it is often of an administrative nature or related to the specifics of the minister's work and within the scope of their ministerial responsibilities.

The question must not be detrimental to the public interest, must not contravene the provisions of the Constitution, must not contain inappropriate expressions or mention the names of persons in a way that could prejudice their private affairs, and the subject of the question must not be related to the person asking it or to a special interest entrusted to them. Furthermore, the question must not refer to information published in the press and must not prejudice a matter that is currently under judicial consideration.

This leads to the question of whether questions can be addressed to the caretaker government. The Constitution does not prohibit members of parliament from submitting questions to ministers who are resigning and who continue to answer them during the period of caretaking. This applies to both written and oral questions.

The number of questions directed towards the caretaker government of Mustafa Al-Kadhimi has increased in line with the duration of the caretaker government's tenure. During the period of the caretaker government, the number of questions addressed to the government has risen steadily. In 2005, the Iraqi constitutional legislator granted each member the right to pose questions to the Prime Minister or one of the ministers.

The constitution does not stipulate whether the questions are to be answered orally or in writing. Consequently, despite the importance of urgent questions, the minister is not obliged to respond. This is despite the fact that many MPs consider this to be an ineffective tool for exposing financial and administrative irregularities

In light of the aforementioned considerations, questioning is a tool of oversight that the parliament can utilise to direct questions to the government, irrespective of whether the government in question holds full powers or is engaged in the daily conduct of affairs. However, it is pertinent to question whether this tool retains the same value and effectiveness in both cases.

It is evident that this approach is less impactful and effective when directed towards a government engaged in daily affairs. One possible explanation for this is the time period allowed for ministers to answer parliamentary questions, which can be extended, allowing ministers to delay or procrastinate in answering, particularly if a new government is forming. Furthermore, the effectiveness of this method is diminished when it is used orally in the context of a debate, as the government's refusal to attend parliamentary sessions may negate

the potential for this approach to be effective, despite the government's legal right to attend and request to speak

In light of the above, it is evident that, despite the limited efficacy of parliamentary questions as a tool for overseeing the government's actions, they serve as a crucial avenue for parliamentary oversight, particularly during periods of governmental crisis.

Section Two : Questioning Ministers through the House of Representatives

Interrogation represents the right of a member of parliament to request data from the minister on the general policy of the state within the scope of the latter's ministry's function or on any specific issue related to this policy. In this sense, interrogation represents a right that is decided by all members of parliament without restriction, even if it was submitted by one or more members. However, it should not be confused between the collectivity of this monitoring tool and its submission by a single member. Once a member of parliament raises the subject of interrogation, it will then become a subject that concerns all members of parliament, and each of them has the right to make their contribution.

It is important to note that the parliamentary system employs a unique form of accountability through the use of parliamentary interrogation. Unlike other systems, such as the presidential or parliamentary systems, the parliamentary system relies on the government's ability to maintain the confidence of parliament to fulfill its assigned duties. This is not a prerequisite in presidential systems, where the government operates independently of parliament, or in parliamentary systems, where the government is fully subordinate to parliament. Consequently, the necessity for parliamentary interrogation is less pronounced in these systems.

It is crucial to underscore the extent to which parliament can engage in interrogation when the government is a caretaker government.

The possibility for Parliament to exercise its right of interrogation, even when the Government is a caretaker government, is a matter of contention. The resignation of a minister does not preclude the submission of a request for interrogation; however, the absence of the government precludes the setting of a date for the interrogation. This trend may be used to support the position taken. It is important to note that the efficacy of this method of oversight for a caretaker government is questionable. It is acknowledged that the process of interrogation may result in a vote of no confidence in the Government and subsequently force it to resign. Does this approach appear to be effective if the desired result has already been achieved? It is pertinent to inquire whether confidence in a government that does not already possess such confidence can be withdrawn.

Second Requirement: Judicial Oversight of the Caretaker Government

In general, the judiciary exercises control over government decisions and examines the administrative decision in terms of its legitimacy and whether it suffers from any of the defects that may affect the elements of the decision, which are (jurisdiction, form, reason, locality, purpose). Furthermore, the aspects of cancellation that may be directed to the administrative decision are the defects that affect the previous elements.

It is evident that the distinction between a fully competent government and a government of day-to-day affairs lies in the reduction of the latter's powers to the scope of conducting current business. In this context, the role of judicial oversight assumes the task of examining the decisions issued by the government to ensure that it does not exceed the scope of its powers during its

tenure as a government of day-to-day affairs. As the judiciary is responsible for ensuring that the government is operating within the limits of its competencies or powers, it is also tasked with determining whether the conditions for exercising these powers are fully met. This implies that the judiciary's role extends beyond merely verifying the existence of the competencies

A comparison of the changes that occur in the government when it is engaged in the conduct of affairs with the elements of the administrative decision reveals that this change is primarily related to the element of jurisdiction. This is because administrative disputes directed to the government of daily affairs are often related to the element of jurisdiction. Consequently, the role of the administrative judge is to determine the extent of this government's commitment. Therefore, recourse to the judiciary is justified on the basis that the government of daily affairs is held to account for its actions in a political sense. Furthermore, the administrative judiciary, with its ability to cancel unlawful administrative decisions ⁽²⁾, is a more effective supervisory body than parliament, although this type of supervision has been criticised by a number of commentators.

Notwithstanding the efficacy of judicial oversight in reversing improper administrative decisions, this supervisory mechanism has been subjected to a multitude of critiques.

Firstly, judicial oversight has been the subject of criticism on the grounds that when it is exercised within the scope of the powers of the government in relation to day-to-day affairs, it is exercised as an oversight of convenience, which is outside its competence ⁽¹⁾, when examining these decisions to the extent that they contain political dimensions.

However, this criticism can be refuted on the grounds that judicial oversight is a legitimate form of oversight and not merely a control mechanism. The administrative judge is tasked with examining the element of jurisdiction and ensuring that the decision in question falls within the powers granted to the government in matters of day-to-day affairs. Furthermore the decision must be within the powers granted, that is, it must be necessary for the continued performance and regularity of public utilities. The question of necessity is determined on a case-by-case basis, taking into account the circumstances in which the decision was issued.

Furthermore, it should be noted that numerous constitutions do not explicitly delineate the competencies of the government in charge of daily affairs. This has resulted in a considerable degree of discretion being granted to these governments in determining what falls within their purview. However, this discretionary power of the government does not imply that the administrative judge exercises control for the sole purpose of ensuring legality. Rather, the discretionary power exercised by the government is contingent upon the fulfilment of the element of competence, thereby raising the control of legality.

The examination of decisions and actions taken by a caretaker government and by an administrative judge represents an intervention in a political subject related to the relationship between parliament and the government. This intervention pushes the entire subject to the scope of acts of sovereignty that are outside the jurisdiction of the judiciary.

The decisions issued by the caretaker government or any other government are diverse. They may be administrative, political, or purely political. The last category constitutes an act of sovereignty that falls outside the scope of judicial control and the government's authority during the caretaker period. This is because the government may issue all of these previous types of decisions. However, it would be erroneous to assume that all decisions made by the government in the course of managing daily affairs can be characterised as an exercise of sovereignty. This is because, if it is subsequently demonstrated that a particular government decision represents an act of sovereignty, it would then fall outside the jurisdiction of the judiciary, as it would not be

considered a political decision, but rather a purely political decision.

The passage of time since the issuance of judicial rulings does not diminish their legal value. These rulings define and set a standard for the conduct of daily affairs when the texts representing this standard are ambiguous. This is the practice of the administrative judiciary, which has contributed to the establishment of many of the rules of administrative law. This body of law is described as judicial law of origin.

The relatively small number of decisions that have been ruled invalid can be attributed to the fact that there is no reason for the judge to believe that they are invalid. This does not in any way affect the existence of such oversight or limit its effectiveness.

In a ruling on a lawsuit filed by the head of the Sunni Endowment Office, the Federal Supreme Court upheld the Council of Ministers' decision to terminate his mandate, stating that the Council of Ministers' decision was valid and that the appointment of a replacement was invalid because it exceeded the Council of Ministers' powers and fell within the jurisdiction of the Federal Supreme Court.

Third Requirement: The Influence of Public Opinion on the Government's Day-to-Day Decision-Making Process

The term 'public opinion' is defined as the collective agreement of people's views on a subject as members of a single society. It is also defined as a set of ideas and beliefs that people usually form on a certain issue and a certain period under the influence of the media. Public opinion is considered an organisational social force that indicates the attitudes of people, and in this sense, it becomes the standard and judge of what works and does not work.

Public opinion can be considered a form of indirect censorship, as it allows for the direct intervention of the general public in a given matter. However, it is often challenging to reach a consensus on political issues. Nevertheless, the mere presentation of diverse opinions in the context of a ministerial crisis can serve to reinforce the principles of democracy. Furthermore, it allows for a more effective scrutiny of the actions of the caretaker government, which will be held to a higher standard than those of the regular government.

It is evident that public opinion plays a pivotal role in the formation of governments and the actions of political parties. The opinions expressed by the public on specific decisions or behaviours can influence electoral trends, prompting political parties to seek to align their actions with the prevailing sentiments. Consequently, during electoral periods, political parties tend to prioritise the satisfaction of public opinion.

At the end of this study, the researcher has arrived at a series of findings that represent the primary and most significant indicators of the utilisation of the daily affairs government in comparative parliamentary systems, particularly in light of the recent Iraqi experience in this field. In light of these findings, recommendations have been formulated in accordance with the data set forth in this study, with the aim of addressing shortcomings and deficiencies, or of complementing the aforementioned deficiencies

Conclusion

1. The concept of caretaker government is one that has not been clearly defined in legal literature. Despite the reluctance of most writers to attempt to define it, we have sought to articulate a precise definition. We define a caretaker government as 'the government's conduct of daily business and the taking of decisions that do not involve political reasons

and motives and are necessary for the continuation of public utilities in the state in proportion to the circumstances that the state is going through.

2. The idea of a caretaker government needs a fertile ground to grow, because we have found that this idea is closely linked to the parliamentary system, and the reason for this is due to the structure of the parliamentary system, which links the work of the government to the confidence of the parliament, and when the government loses this confidence, whether for its own reasons or due to the dissolution of the parliament, it enters within the framework of the caretaker idea to avoid the state of administrative vacuum
3. The link between the caretaker government and the parliamentary system is not only of existence, but the caretaker government is considered necessary for the parliamentary system, since this system is interspersed with many periods of time needed by the political parties that are represented in the parliament to reach the election of a prime minister
4. The powers that are exercised by the caretaker government are different in normal circumstances and in exceptional circumstances, since in normal circumstances they are everything that is necessary for the continuation of public services and the necessity of the continuation of the State, while in exceptional circumstances the scope of powers is extended to include everything that is "necessary to face these circumstances"
5. The use of the term "political responsibility of the government" is more accurate than ministerial responsibility, because political responsibility "is a type of ministerial responsibility in addition to administrative, civil and criminal responsibility"
6. Parliamentary oversight has four types of censorship, namely 'questioning, interrogation, parliamentary investigation and withdrawal of confidence in the government', because the procedure of withdrawal of confidence is always described as a means of oversight, while the withdrawal of confidence is a political sanction directed at the government after it has been oversighted, and the question is always defined as a means of investigation and clarification, which does not have any legal effect and, in this sense, is outside the concept of oversight, but the importance of the question arises from the fact that it allows access to the content of the subject of the question and, through the answer to the question, can reveal the existence of defects, omissions or deviations, and here the parliament moves to the means of censorship.
7. In the field of control of the work of the caretaker government, we have found that the parliamentary control is not effective due to the absence of the element of political sanction - achieved in advance, since the government has lost its legal basis; the judicial control - the control of the administrative court - is limited to the decisions issued by the government, which can be appealed, while other decisions can be appealed, As far as the control of public opinion is concerned, it does not have the same importance in all countries; it is effectively practised in developed countries where public opinion is considered very important, while the situation is different in developing countries

Recommendations

1. We recommend amending the text of Article (83) of the Iraqi Constitution of 2005, which deals with the individual and solidarity responsibility of ministers, and replacing the term "individual" with the term "personal" in the mentioned article, and limiting the responsibility of the Prime Minister to solidarity responsibility, the reason for this is that the Prime Minister represents the general policy of the ministry, as confirmed by Article (78) of

the Iraqi Constitution of 2005.

2. We recommend amending the text of Article (59) of the Rules of Procedure of the Iraqi Council of Representatives to allow the acceptance of the questioning by any other member if the member who submitted it wishes to withdraw the questioning request, and to regulate the case of the absence of a member of the Council of Representatives who was absent from the questioning session without a legitimate excuse, and the provision that the questioning cannot be forfeited. We propose that the aforementioned article can be reworded as follows: "The questioner has the right to withdraw his request for interrogation at any time, unless it is accepted by one of the MPs, and the absence of the questioner from the interrogation session without a legitimate excuse shall be considered a withdrawal, and the interrogation shall be cancelled in two cases: (a) the disappearance of the status of the person to whom the interrogation is addressed, and (b) the disappearance of the status of the person who submitted the interrogation by not adopting the interrogation by another member) and the current text "The questioner has the right to withdraw his request for interrogation at any time, and the interrogation is dropped by the disappearance of the status of the person who submitted it or the person who addressed it.
3. We propose to amend the text of Article (61/VIII) of the Iraqi Constitution for the year 2005 in order to prevent the withdrawal of confidence from the minister based on his wish, because the minister can resign if he does not want to continue in his ministry, and on the other hand, to amend the said text in order to unify the number of deputies required to submit a motion of no confidence between a motion of no confidence from a minister or the Prime Minister, or to make the difference between a motion of no confidence from a minister or the Prime Minister, we propose to amend the aforementioned text in order to unify the number of deputies required to table a motion of censure between a motion of censure against a minister and a motion of censure against the Prime Minister, or to make the difference greater than five deputies in order to emphasise the importance of the motion of censure against the Prime Minister. Perhaps the number of deputies in the next Iraqi parliament will be more than 275 members, making the difference between one fifth of the number of deputies - the number required to submit a motion of no confidence in the Prime Minister - and the number of deputies required to submit a motion of no confidence in a minister - fifty members - to ensure the importance of submitting a motion of no confidence if it is directed against the Prime Minister.
4. To regulate the case of dissolution of the parliament more precisely than is the case under Article (64/II/B) of the Iraqi Constitution of 2005, and to set a date for convening the council and not only for holding elections, and thus to set a certain period of time for the new council to assume its duties and not only a date for elections, as holding elections does not end the state of legislative vacuum, while allowing the old council to convene and exercise legislative powers if the new council is delayed for any reason, as elections do not end the state of legislative vacuum.
5. We call on the Iraqi constitutional legislator to regulate the fate of the business of the parliament when it is dissolved, as it would have been preferable for the rules of procedure of the House of Representatives to include a provision regulating the fate of the business of the parliament when it is dissolved, as it would have been preferable for the rules of procedure of the House of Representatives to include a provision regulating the fate of the business of the parliament when it is dissolved.

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