

Direct Means of Parliamentary Oversight of the Caretaker Government

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Abstract

The various constitutional regulations have mandated the regulation of parliamentary control means over the ordinary government and affirm them as a function of members of the parliamentary councils. However, the issue of organizing such means on the caretaker government has not been concerned with the same care, which has opened the door for jurisprudence and the judiciary to express an opinion on the feasibility and effectiveness of such means on the caretaker government. We have worked to clarify those means, removed the dissemination of jurisprudence and jurisprudence regarding its effectiveness to the caretaker Government, and also revealed the legislator's will on the topics of the study. At the conclusion of the study, we reached a number of conclusions and recommendations, the most important of which was the importance and effectiveness of direct means of parliamentary oversight of the caretaker Government, As a result of its highly effective means of achieving effective implications for the caretaker government We called on Iraq's constitutional legislature to adopt provisions establishing effective sanctions to prevent ministers in the Government of the caretaker from failing to answer or attend when using one of the means of parliamentary control.

Keywords: Parliamentary Oversight, Direct Means, Caretaker Government, Explanatory Means, Accusatory Means.

Parliamentary oversight of government actions requires legal means that clarify the desired objectives and the consequences that result from them, in order to have an effective impact in curbing the government in general and the caretaker government in particular, and holding it accountable if it deviates from the path of legal correctness.

Parliamentary oversight of the caretaker government is exercised through various means, and these means differ in their nature and the extent of the effectiveness of the oversight role exercised through them over the caretaker

government. Therefore, we find it necessary to study these means and determine whether they have a realistic dimension that would limit the transgressions of the caretaker government or its violation of the laws related to its functions.

Study Problem.

The basic research problem is summarized in the extent of the sufficiency and effectiveness of the means of direct parliamentary oversight of the caretaker government? Do these means maintain the same effectiveness when directed to the caretaker government?

Study Methodology.

In line with the nature of this study, the inductive and analytical methodologies will be adopted. Through the inductive curriculum, we can read the provisions, legal texts and jurisprudence, and analyze them through the analytical curriculum, thus finding the feasibility and importance of direct means of parliamentary oversight of the caretaker government.

Explanatory Means.

Illustrative means are quiet cooperative natural means whose primary purpose is access to information, as well as a mutually satisfactory solution for the Government and Parliament, in the public interest. We will address both ways of asking and raising a general theme for discussion, as follows:

4.1. Parliamentary Question.

The question is a supervisory means by which a Member of Parliament aims to gain information on something he is unaware of, to ascertain whether an incident has occurred or to know what the Government intends to do on a particular matter. The position of the Constitution of the Republic of Iraq of 2005 is positive in terms of referring to the parliamentary question. Article 61 (VII/a) stipulates that: "A member of the Council of Representatives may ask the Prime Minister and the Ministers questions on any subject falling within their competence. Each of them shall answer members' questions (Adel Al-Tabtabaei, 1986).

Based on the foregoing, the question arises as to whether parliamentary questions can be addressed to the caretaker government. Second, do these questions have the same value and effectiveness when addressed to the caretaker government, especially since there is a part of the doctrine that suggests that the value of this means to the caretaker government is weak and less effective if directed to a normal, normal government. The truth is that what the people of this approach went to was not the truth, but rather they moved away from it. This is an approach

that contradicts the provisions of Sharia, and so do you (Ihab Zaki Salam, 1983).

A. With regard to the first enquiry, there was no constitutional or legal impediment to Parliament's use of the right to question the caretaker Government, which could be used by the caretaker Government as against the normal normal Government, under its legal conditions and conditions.

B. As for the second enquiry, the answer is through the article's stipulation. 51 of the Rules of Procedure of the Iraqi Council of Representatives No. 1 of 2022: "The President and the Vice-Presidents of the Council shall jointly include the question, which shall be answered orally in the agenda of the most appropriate meeting at least one week after the date on which it has been communicated to the official concerned, and the reply to the question may not be delayed by more than two weeks" (Ghassan Laibi Manati, 2010).

The Federal Supreme Court of Iraq has also recognized that the presence of an official before Parliament is a constitutional obligation, whether the reason for his presence is a question, clarification or interrogation by stating that "... The subject matter may be an interrogation and its implications, question or clarification and its implications. The Minister's presence before the Chamber of Deputies is a constitutional obligation that must be enforced as long as there is a case that has been supplemented by its constitutional and legal grounds and authority. (Muhammad Bahi Abu Younis, 2012) "

A practical application to be mentioned in this regard was the Parliamentary Question of the Iraqi Parliament of 2022/9/26 addressed to the Minister of Oil of the Caretaker Government under the pretext of (Mr. L.K).

4.2. General theme for Discussion.

Raising a general theme for discussion is a quiet means of parliamentary oversight of the Government's work and this may have led some scholars to consider it as an exchange of views and cooperation between the Government and Parliament with a view to achieving the public

interest In this sense, this means is of paramount importance among other oversight means, as it meets the aspiration of Parliament to know the Government's policy of confronting a real-time, state or contemporary problem and, on the other hand, removes fraud from the Government's foresight and reveals to it the intentions and directions of Parliament on the matter at hand (Philipp Lavaux, 1983).

From this point of view, this means finds its constitutional basis in the article (16/VII/b) of the Constitution of the Republic of Iraq of 2005, which stipulated that "Twenty-five members of the House of Representatives may raise a general topic for discussion to clarify the policy and performance of the Council of Ministers, or one of the ministries, and submit it to the Speaker of the House of Representatives. The Prime Minister or Ministers shall set a date to appear before the House of Representatives for discussion"(Ali Manea Sorour Al-Mutairi, 2005).

In line with the foregoing, the spark of two legal issues arises. The first relates to the constitutionality of the exercise of this means on the caretaker government, and the second to the effectiveness of this means if it is used on the caretaker government, does it retain the same effectiveness as it does when exercised against a normal normal government?

A. With regard to the constitutionality of the exercise of this means to the caretaker Government, there is no constitutional barrier to members of the House of Assembly from submitting a request for a general topic of discussion to be "hosted" by the head of the caretaker Government or one of its ministers, who must respond favourably to the request for hosting and not be disrupted by abstinence and empty arguments imposed by parliamentary oversight.

B. As to the effectiveness of this instrument in terms of whether it is used on a caretaker government, and whether it is as effective as it is when directed towards a normal government, as long as the discussion is

"Hosting", aimed at objective censorship and, at the same time, far from triggering political responsibility, Its desire to reach the mitigating solution by creating a joint proposal between the Government and Parliament Government ", it does not want to eliminate neither the Government nor its ministers, They want to continue to govern, while at the same time reforming and developing the situation in question in order to overcome the political crisis, This leads us to say that its effectiveness on the caretaker government is exactly the same as on the normal normal government(Wahj Khadir Abbas, 2020).

A practical application to be noted in this regard is an invitation to attend a discussion by the Minister of Finance of the Caretaker Government of Iraq under Mr. M. Al. On the high exchange rate of the dollar and its implications for poor strata of society, as well as the discussion of the issue of public debt policy and the policy of the Ministry of Finance. In Kuwait and Lebanon, there has been no practical application to this effect.

Accusatory Means.

Accusatory means are naturally aggravated, bearing among them an accusation against the Government or one of its members (Bidegaray. C.H. et.), 1973). They do not stop from clarifying or exchanging information, as in the case of explanatory means, but go beyond it to the stage of accusation and prosecution. They therefore have severe implications for those against whom they are directed. We will address the means of interrogation and parliamentary investigation, as follows:

5.1. Interrogation.

One of Parliament's greatest and most dangerous means of parliamentary oversight vis-à-vis the executive branch In view of the gravity of this means, the Iraqi Constitutional Legislature stipulates in the Constitution of the Republic of Iraq for the year 2005 that interrogation shall take place in the article. (16/VII/c) where the right to question the Prime

Minister or Ministers was granted upon approval (25) A member of the Chamber of Deputies provided that the purpose of the interrogation is to hold them accountable for matters within their competence. (A member of the Houe of Representatives, with the consent of twenty-five members, may issue an interrogation to the Prime Minister or Ministers to hold them accountable in matters within their competence (Adel Al-Tabtabaei, 1986). The interrogation shall not be discussed until at least seven days after its submission.) Article 16/II/e also stipulates that: "The Council of Representatives shall have the right to question officials of the receiving bodies in accordance with the procedures relating to ministers. It may exempt them by an absolute majority. The Internal Regulations of the Iraqi Parliament No. (1) of 2022 also regulate the interrogation process in Articles 56-61.

In line with what has been said, it is necessary to clarify a very important issue, namely, can Parliament direct interrogations to the caretaker Government? Is there a constitutional barrier to Parliament's interrogation of the caretaker Government? The effectiveness of this means for the caretaker government, especially since some of the doctrine denies any effectiveness to question the caretaker government on the grounds that the result of the interrogation of any withdrawal of confidence has been achieved in advance of the caretaker government and therefore the means of parliamentary interrogation becomes legally useless. In order to take note of the above observations:

A. Relative to the possibility of questioning a caretaker government, there is no constitutional or legal impediment preventing members of parliament from submitting an interrogation to a caretaker government; therefore, some scholars went on to give the right to Parliament to exercise questioning even when the Government is a Government for the day-to-day or ongoing business, and they explain why they went to it that the Minister's resignation

does not exempt him or her from accountability and does not hinder the application for questioning. We support the jurisprudence in this aspect and see it as consistent with the proper legal logic, as in a sentence and in detail with the philosophy of parliamentary oversight, the possibility of even one percent of a caretaker government's ability to infringe and override its limits leads to the importance of parliamentary oversight, especially the means of interrogation to deter such infractions and abuses (Ali Manea Sorour Al-Mutairi, 2005).

B. As to the argument of ineffectiveness of interrogation of the caretaker government's opinion that interrogation has two effects, the first is a recall, which is pre-established in the caretaker government. Secondly, the indictment leading to conviction, by way of accusation arising from the parliamentary interrogation of the caretaker Government, the defendant or offender may be referred to the competent authorities for legal sanction, and the lack of attention to this feature of the interrogation may have led the authors to deny the interrogation's effect on the caretaker Government, which is not accepted by proper legal reasoning. Nevertheless, the practical applications of the interrogation of the caretaker government are minimal if not non-existent, and the interrogation of the caretaker Government's Minister of Finance under Mr. M. S. is practical. LK) but unfortunately the interrogation request turned into a public debate as a result of the failure to respond to the interrogation request (Muhammad Bahi Abu Younis, 2012).

5.2. Parliamentary Inquiry.

The means of parliamentary inquiry reflected Parliament's desire to come up with those facts by conducting an investigation that would gain the necessary information. This role of the parliamentary inquiry may have been overshadowed on the basis of the approval of this means. It is not a need for a text to be determined, where its existence derives from the oversight and legislative nature of Parliament (Ghassan Laibi Manati, 2010).

The Constitution of the Republic of Iraq of 2005 did not regulate the parliamentary inquiry, but that the rules of procedure of the Iraqi Council of Representatives (No. 1 of 2022) are affirmed in a number of articles, article 32 (II) of which stipulates that: "The Council of Representatives shall oversee the executive branch. Second: To investigate any of the officials referred to above regarding any fact which the Council considers to be related to the public interest or citizens' rights. Article 82 stipulates that: "The Council shall establish subcommittees, interim committees and commissions of inquiry in accordance with the requirements of the work and the subjects before it." The committees of inquiry shall be constituted pursuant to article 83 of the Council with the approval of a majority of those present in the House of Representatives on the proposal of the Presidency or of 50 members.

Based on the foregoing, the following question arises: Can Parliament conduct a parliamentary inquiry into the caretaker Government? The effectiveness of this supervisory instrument vis-à-vis the caretaker government, inevitably according to the above-mentioned texts, there is no objection to an investigation of the head of the caretaker government or one of its ministers, as long as the parliamentary inquiry is related to the public interest and citizens' rights (Wahj Khadir Abbas, 2020).

There is no room to link the realization of the cases of the establishment of a caretaker government, including the realization of the case of withdrawing confidence (ministerial responsibility) and the suspension of the parliamentary investigation method, as this link is absolutely incorrect, because it confiscates the parliamentary oversight right, which is a constitutional right that may not be infringed upon by restriction or limitation (Ihab Zaki Salam, 1983).

Hence, it becomes clear to us that an investigation is permissible with the caretaker government, as there is no connection between

political responsibility and investigation. The philosophy of parliamentary oversight requires the continuation of its means as long as there is a government in place, and there is a possibility of it violating the law or exceeding the scope of what is specified for it. Therefore, the continuation of the means of parliamentary investigation of the caretaker government is based on a solid constitutional right that may not be violated (Philipp Lavaux, 1983).

Naturally, the effectiveness and impact of the investigation on the caretaker government is realized, and this is satisfied implicitly by what was stipulated by the Federal Supreme Court of Iraq when it decided in one of its decisions. "Accordingly, the defendant ' If there is a violation of the law, he shall go to notify the competent authorities of the breach and his assignments, namely, the prosecution, the integrity authority or the financial supervision to take whatever is necessary."

Accordingly, commissions of inquiry can indirectly refer them to specialized bodies or refer them directly to the courts. If there is a breach or violation of the law in the course of an investigation during the course of the course of business, Not to mention the power of parliamentary commissions of inquiry, which may lead, even indirectly, to the annulment of the caretaker Government's decisions through its report recommendations. Therefore the parliamentary inquiry has a great impact and benefit on the caretaker government, if it were used in an optimal manner away from political interests (Yahya Al-Jamal, 1974).

There are practical examples that we can provide in this regard that confirm the possibility of a parliamentary inquiry against the caretaker Government, which was carried out during the caretaker Government of Iraq under (Mr. M. Al. K) Establishment of two investigative committees in Iraq on 8/10/2022 related to the Iranian and Turkish bombing of the Iraqi city of Erbil (Wahj Khadir Abbas, 2020).

Conclusion

Finally, it has become clear to us that the means of direct control over the caretaker Government, which have an important impact on the control of the caretaker Government, are such that the House of Assembly can address any breach or abuse by that Government. Therefore, we suggest inviting the Constitutional

Legislature to include in the 2005 Constitution provisions establishing sanctions to bring ministers in the caretaker or ordinary Government to answer questions, interrogations and other means of parliamentary oversight, since the problem of failure to answer is one of the most acute issues of the parliamentary assemblies.

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