

Caretaker Government Under The Constitution Republic of Iraq For The Year 2005

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Abstract:

The caretaker government, or the so-called caretaker government, is a temporary government for a short period of time and is lacking in authority as it does not possess all the powers that the permanent government possesses according to the electoral merit. Of the issues, whether legislative or administrative, outside the scope of the caretaker government, due to the seriousness and importance of these actions, which made according to the constitutional and legal legislation the competence of the elected and permanent governments. The study dealt with this issue according to a plan that was divided into two requirements. Then we discussed in the second requirement the legislative and legal powers of the caretaker government, and then we turned to the practical reality of the caretaker government in Iraq since the resignation was submitted to the government of Prime Minister Adel Abdul Mahdi, especially since the 2005 constitution of Iraq did not include any text regulating the state of resignation of the Prime Minister.

Keywords: caretaker government, resignation of government, daily affairs, full powers, limited powers

I. Introduction:

Parliamentary systems are based on a basic pillar that represents the cornerstone of the parliamentary system, and it is the responsibility of the ministry before the parliament, because the government cannot exercise its powers without having the confidence of the people's representatives represented in the parliament, as the ministry cannot continue to exercise its original competencies without the presence of Control over its actions, rather it turns into what is called a (caretaker government), in other words that the government can only rule in the presence of parliamentary oversight, and therefore, upon the government's resignation, parliament cannot exercise this control as it is an oversight devoid of the power of punishment as it cannot Bringing down a resigned government On the other hand, if the resigned government is secured by the supervisory authority of Parliament, it may take some decisions that go against the will of the people's representatives, ie the parliament.

The importance of the study: Most of the constitutions have intended to lay down the constitutional texts that regulate the procedures that can be adopted when the government is transformed from a government

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with full powers to a government with limited powers, and with reference to the 2005 Constitution of Iraq, it indicated the existence of two cases of this type, the first is when confidence is withdrawn from the government and the second is represented Upon the dissolution of Parliament, and consequently, the Constitution of Iraq for the year 2005 did not contain any text indicating the resignation of the government and whether it would turn during that period into a caretaker government, and therefore the issue is extremely important, especially after the resignation of the government of the Prime Minister (Adel Abdul Mahdi) on 11/30/ 2019.

The problem of the study:The research problem is limited to raising a number of questions, including what is meant by a caretaker government? What is the constitutional and legal basis for the caretaker government? What are the limits of the powers of the caretaker government? Did the Constitution of Iraq for the year 2005 or the internal system of the Council of Ministers regulate the conditions of the caretaker government in the event of the government's resignation? Did the constitution specify a time period for the life of the caretaker government? Where the questions contained in the research problem will be answered by a research method in accordance with Iraqi legislation.

II. The methodology of the study:

The descriptive and analytical approach was adopted by relying on the analysis of legislative texts in accordance with Iraqi legislation according to a scientific plan represented by two requirements. In the first we dealt with the definition of the caretaker government and in the second requirement the legislative and legal powers of the caretaker government, and then we turned to the practical reality of the caretaker government in Iraq For 2019.

The First Requirement

The concept of caretaker government:

The First Branch: Defining the caretaker government:

A caretaker government: it is called a caretaker government or a caretaker government, and it is a temporary government lacking in authority for the purposes of conducting affairs. Sometimes it may be a transitional stage, elections, or an emergency circumstance that prevents the establishment of a new government or its delay, and this government is not entitled to decide on important and crucial matters .

The caretaker government was also defined as a government transformed from a normal government with full powers to a government limited with its powers, as it represents a transitional period between the executive rule of the procedural authority and the limits of securing the continuity of government work within its administrative boundaries. The reason is a natural constitutional practice resulting from the government's resignation or considering it as resigned .

It is also intended by the term disposition of daily matters: they are the daily actions and routine actions of the administrative apparatus that do not include any political dimension that may create future effects, as there must be a government that has the authority to ensure the continuation of daily life and its necessary

requirements and its continuity and to ensure the regularity of the functioning of the public facility, for the period between the date of Dismissing her or submitting her resignation, and it is not within her jurisdiction that any measures that would bind the next government permanently and continuously.

In other words, the caretaker government is limited to conducting business that does not expose the responsibility of the ministry collectively or the minister concerned to political results, because the government or the ministry governs with the confidence of the people represented in parliament and the resigned government lacks the confidence of Parliament, which makes it unable and without constitutional authority to take political decisions .

The term “disposing of daily affairs” was mentioned in the folds of the 2005 constitution of Iraq. Some believe that the law’s use of the term disposing of daily affairs reflects a trend that tends to clearly and explicitly diminish the powers of this ministry in the sense that it is not within its competence for matters of a future and fateful nature. Thus, the constitution distinguished between the ministry with full powers Which defined its competencies and powers and between the Ministry of daily affairs management with limited specializations.

The Second Branch: the legal basis for a caretaker government:

The decision of the French State Council of 4/4/1952 has contributed to defining the principle on which the caretaker government operates, as the decision stipulated: (There is no escape from the presence of an authority entrusted with ensuring the continuity and permanence of national life, between the date of the government's resignation and the date of the formation of the new government so that The exceptional mandate of the government which has resigned or is considered as such is entrusted only to the foundation of securing the necessary requirements of the state.

Accordingly, there is an important constitutional principle, which stipulates the necessity of continuing the administration and public utilities in the state, and therefore this principle is fundamental, rather it is the basis for the so-called conduct of business to avoid the existence of a power vacuum .

The caretaker is one of the imperative necessities in the life of the state, and in implementation of the principle of the continuation of the administration, the resigned government must remain operational, as mandated by the President of the Republic and according to a letter directing him to it after accepting its resignation to conduct normal business.

The French Council of State, in its decision of 4/22/1966, clarified the scope of the caretaker government's powers, and it was called ordinary or current business, meaning that they are actions that do not present the collective responsibility of the ministry or the concerned minister to political results because the government or the ministry is governed in the name of the people represented in parliament and thus The resigned government will lose the confidence of Parliament, which makes it unable and without the constitutional authority to make political decisions .

Consequently, the conduct of business is an important result of a constitutional principle, which is the continuity of the public utility, which must not stop working due to its connection with the conduct of the public interests of citizens, and therefore the important legal basis for the powers of the resigned government lies in the

principle of the state's permanence and continuity, and this principle gives it the basis to act in all normal and exceptional cases And necessary .

The Second Requirement

The constitutional and legislative powers of the caretaker government in accordance with Iraqi legislation

The First Branch: the constitutional powers of the caretaker government

With reference to the Constitution of the Republic of Iraq for the year 2005, he referred in Article 61 to the term (daily affairs management). The constitution referred to the following:

First: Withdrawing confidence from the government, as Article 61 of the Constitution of the Republic of Iraq stipulates: (In the event of a vote to withdraw confidence from the entire cabinet, the prime minister and ministers continue in their positions to run daily affairs for a period not exceeding thirty days until a new cabinet is formed in accordance with the provisions of Article 76 of the Constitution). Therefore, this situation does not apply to the current situation in Iraq.

Second: Dissolving the House of Representatives Article 64 of the Constitution of the Republic of Iraq for the year 2005 stipulated (The President of the Republic calls upon dissolution of the House of Representatives to general elections in the country, within a maximum period of sixty days from the date of the dissolution, and the Council of Ministers in this case is considered resigned and continues to run daily affairs) Consequently, this case does not apply to the Iraqi reality either.

Third: When the position is vacant for any reason, Article 81 of the Constitution of the Republic of Iraq for the year 2005 stipulated that: First (The President of the Republic shall act as Prime Minister when the position is vacant for any reason whatsoever. Second) When the situation stipulated in Clause: First of this article is fulfilled, the President The Republic commissioned another candidate to form the cabinet within a period not exceeding 15 days).

The material under discussion did not mention the nature and type of reasons that lead to the vacancy of the position, and therefore the question that arises does it include the state of resignation or not?

To answer this question, we find that the article referred to the vacancy of the position of the head of government, but at the same time the government remains in place, but headed by the President of the Republic for a period of up to 45 days divided as follows:

The president of the republic must, within a period of 15 days, assign a person to form a government, and the person in charge must form his government within 30 days, so throughout this period it is headed by the president of the republic. Therefore, Article 81 did not refer to a caretaker government, which may allow it to say that the government is fully empowered until Government formation .

The Constitution of Iraq of 2005 did not include any text regulating the state of resignation of the prime minister, and it did not refer to the caretaker government except in two cases, which is the case of withdrawal of

confidence from the ministry or the prime minister, and the second case is the dissolution of parliament and its name in the conduct of daily affairs.

On the other hand, there are many issues that are outside the scope of the caretaker government, considering that they do not fall within the ordinary business, in addition to that they are not required by the state of urgency or exceptional circumstances, including, for example, the proposal to amend the constitution or the proposal of draft laws or decrees and decisions that include an amendment in legislative texts.

In addition, the Constitution of the Republic of Iraq for the year 2005 specified the period of time for the life of the government, which is four years, but at the same time it did not specify a time period for the life of the caretaker government, which is a stage in which the powers differ, because the origin in the parliamentary system is that the government is not competent to exercise its powers except when it enjoys Parliament has confidence and is accountable to it and is subject to its oversight.

The Second Branch:The legislative powers of the caretaker government

First: The legislative organization of the caretaker government:

On our part, we see that there is no regulation in the legislative organization, which begins with laws, any regulation of the issue of the caretaker government, and with reference to the regulations and instructions related to the situation, represented by the internal system of the Council of Ministers No. 2 of 2019, Article 42 / First indicated that the Council of Ministers continues to conduct affairs Every day of the state until the formation of the new government in the following cases:

A- The end of the election cycle of the Council of Representatives.

B - Withdrawing confidence from the Council of Ministers or its president.

C- Dissolving Parliament.

Second: By conducting daily matters, it is intended to take decisions and procedures that are not subject to postponement that will continue to operate in the state institutions and public utilities regularly and steadily, and does not include, for example, proposing draft laws or contracting loans or appointing to senior positions in the state and exempting them or restructuring ministries and departments. Thus, the internal system did not refer to the state of the government's resignation?

On the other hand, there are many issues that fall outside the scope of the caretaker government on the administrative side, including, for example, decisions that amend the status of public institutions and facilities, or decisions that include an amendment to regulations or decisions that include modification or infringement of rights recognized by law or decisions Appointments that include political dimensions, and at the same time the government must ensure that public utilities continue to carry out their duties regularly and steadily.

Second: The practical reality of the caretaker government:

(Mr. Adel Abdul Mahdi) was previously assigned to prime minister for the fourth electoral cycle on October 25, 2018, and due to popular pressure, he submitted his resignation before the end of the constitutional

and legal period of the government, which is supposed to be extended to four years, and the resignation was submitted on 11/30/2019. Thus, the government resigned entirely.

Whereas the responsibility is jointly between the ministers and the prime minister and this is what was stipulated in Article 83 of the Constitution of the Republic of Iraq for the year 2005 (the responsibility of the Prime Minister and the ministers before the Council of Representatives is joint and personal) and it cannot be considered a caretaker government.

The question that arises, why did the Prime Minister submit his resignation to the House of Representatives and did not submit it to the President of the Republic?

To answer this question, we would like to show that the Iraqi constitution of 2005, as well as the rules of procedure of the Council of Ministers No. 2 in 2019, did not address the issue of resignation. To be submitted to the House of Representatives and not to the President of the Republic, as it emerged from it.

In light of this procedure, the General Secretariat of the Council of Ministers / Legal Department issued the number Q / 2/5/27 on 12/15/2019, which includes the following based on the second clause of Article 42 of the Cabinet Bylaw No. 2 of 2019 and in view of the transformation of the government To a caretaker government, and in accordance with the principles and contexts applicable in countries with democratic regimes, the ministries will proceed to conduct their daily business until the formation of the new Iraqi government and to take the constitutional oath before the House of Representatives.

A caretaker government is qualified to manage routine cases or urgent and urgent cases that the next government cannot wait to address.

The caretaker government stops implementing its government program in matters that it has not started with or that may affect the work of the next government.

-The caretaker government will stop issuing any decision that would affect the ability of the new government to carry out its duties fundamentally.

-The government will stop taking any other decisions related to foreign policy, with the exception of urgent issues that the Council of Ministers assesses, provided that each case is studied separately

The Council of Representatives continues to direct written questions to the government and its ministers in accordance with the constitution, the law of the House of Representatives, its formations, and its bylaw.

-The caretaker government may form committees to prepare legislation or instructions to facilitate the implementation of laws.

It was assumed, through referring to Article 81 of the Constitution of the Republic of Iraq for the year 2005, that the President of the Republic act as the Prime Minister in the event that the position became vacant for any reason whatsoever, but because the President of the Republic (Mr. BarhamSalih) refused to assume the position of Prime Minister and did not explain the constitutional and legal reason. Rather, the President of the Republic, Mr. BarhamSalih, indicated the necessity of choosing a new prime minister that would agree with the demands of the uprising masses.

Consequently, the House of Representatives considered the government a caretaker government under the pretext of preventing Iraq from falling into the stage of lack of a central government and the negative consequences of that. At the same time, the House of Representatives did not show the constitutional and legal basis for considering the government a caretaker government.

On 1/1/2020, the President of the Republic demanded the political blocs to submit or nominate names for prime minister, and the names were rejected by the President of the Republic, as they were not consistent with the trends of the demonstrators.

On 1/2/2020, the President of the Republic assigned Mr. (Muhammad Tawfiq Allawi) and completed the candidate cabinet, but the members of Parliament did not attend to hold the session as the candidate does not agree with the interests of their parties.

On 3/16/2020, the President of the Republic (Mr. Barham Salih) issued a presidential decree appointing (Mr. Adnan Al-Zarfi) as Prime Minister, and on 4/9/2020 the latter apologized for taking the position due to the political incompatibility of his assumption and passing the ministerial cabinet.

On 9/4/2020, the President of the Republic (Mr. Barham Salih) issued a presidential decree appointing (Mr. Mustafa Al-Kazemi) as Prime Minister. It becomes clear to us that the constitution is broken and that political interests prevail over the constitutional text.

III. Conclusions:

It became clear to us that Iraq is witnessing a state of continuous and permanent violations and violations of the constitution, as the continuation of the caretaker government is a violation of the provisions of the constitution and at the same time it is inconsistent with the demands of the demonstrators, represented in the request for the resignation of the government, which led to a state of confusion in the political scene, which reflected negatively on all aspects of life in Iraq.

1 -The Constitution of Iraq of 2005, as well as the internal system of the Council of Ministers No. (2) in 2019, did not address the issue of the resignation of the Prime Minister.

2 -In the folds of the Iraqi constitution for the year 2005, the term (daily affairs management) was mentioned, and the term (business carriage) was not mentioned.

3 -That the current situation is tantamount to disrupting the constitution and has caused a state of confusion in all fields, including, for example:

A- Obstructing the passage of the basic laws that await the Iraqi street.

B failure to approve the financial budget for the year 2020, which reflected negatively on all aspects of life.

C - Causing an economic crisis, as most projects were suspended as the government was unable to complete foreign contracts related to the implementation of large projects.

W - The impact on most of the basic joints of life, especially in the field of education, health, trade, industry and others, and this has negatively affected the functioning of the public facility.

IV. Recommendations

1 -The necessity to adhere to the implementation of the constitutional provisions represented by Article 81 of the Constitution of the Republic of Iraq for the year 2005, which stipulated (First: The President of the Republic shall assume the office of Prime Minister when the position becomes vacant for any reason whatsoever).

2 -We recommend that the Iraqi legislator should set a comprehensive and prohibitive definition of the caretaker government, whether through the constitutional amendment to the Constitution of the Republic of Iraq for the year 2005 or through its inclusion in the legal texts of the internal system of the Council of Ministers.

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