



LEGAL FRAMEWORK FOR THE LIMITS OF THE POWERS OF THE CARETAKER GOVERNMENT IN IRAQ

Haider Rasool Mohsen Al Kaabi

Technical Institute of Najaf, Al-Furat Al-Awsat Technical University

dr.hayder.kaabi@atu.edu.iq

Article history:	Abstract:
<p>Received: 23rd April 2023 Accepted: 20th May 2023 Published: 20th June 2023</p>	<p>The executive authority is responsible for implementing public policy in the state and plays an essential role in planning and implementing public policy in the state. Its role varies according to the system used in countries, as it plays a pivotal role in the parliamentary system. Daily business, as the government transforms from an authority with full powers to a government with limited powers, as in the case of dissolution of parliament or withdrawal of confidence from the government, or in the event of the end of the parliamentary electoral cycle. The constitutions have been keen to organize this type of government in terms of powers and terms of time.</p> <p>The Iraqi constitution of 2005 stipulated how the full-fledged government would be transformed into a caretaker government, as well as the responsibility of this government in the event of exceeding the powers entrusted to it and the point of control over it, as well as the periods under which this government would be a caretaker government. However, problems are raised about this type of government, especially in Iraq. So, we need to study and analyze, and this is what we will show in this study tagged (the legal framework for the limits of the powers of the government to conduct business in Iraq).</p>

Keywords:

INTRODUCTION

The world's countries differ in their adoption of a specific political system. Some of them adopted the presidential system, some adopted the assembly government, and some adopted the hybrid system. Other countries adopt the parliamentary system, which is the principle of cooperation and balance between the executive and legislative powers, as one of the essential pillars of this system. However, in some instances, the executive authority is transformed from a government full of powers as one of the pillars of this system to a government that handles daily issues or what is called a caretaker government.

A *caretaker government* is defined as a government transformed from a stable government with full powers to a government with limited powers, as it is the transitional period between the administrative rule of the executive authority and the limits of ensuring the continuity of government work within its administrative borders due to a constitutional practice of nature resulting from a new political reality represented by either the resignation of the government or its consideration by the resignation and according to the provisions of the constitution in the parliamentary system.

This research aims to clarify the legal and constitutional basis for the idea of a daily caretaker government, the limits of this government's powers, and its responsibility for the actions it undertakes during the transitional period. The importance of the research lies in the fact that this type of government, especially in Iraq, is of particular importance if we find that these governments exercise functions and powers that may be prolonged as a result of certain circumstances, so there must be a standard and foundation upon which this government rests and not to exceed these limits within the limits of legitimacy. Constitutional and legal.

The problem of the research is to identify the actions and behaviors to which the concept of conducting business applies and how to define these actions. What is the duration of this type of government? Moreover, dropping the provisions of the Constitution of the Republic of Iraq for the year 2005 on this type of government as it is a reality that we live in the country during specific periods that the executive authority or the government goes through in a more precise sense.

In this research, we have relied on the analytical approach to analyze the texts by the general constitutional principles that govern this type of government and project it on the reality of the regime in Iraq in accordance with the provisions of the Constitution of the Republic of Iraq for the year 2005, as well as the decisions of the Federal Supreme Court issued in this regard.

The research was divided into an introduction and two sections. In the first topic, we dealt with the idea of the daily caretaker government in terms of definition, basis, and transformation mechanisms to frame the general concept of this type of government. Then, in the second topic, we dealt with the limits and powers of the daily caretaker government in two demands. First, we dealt with the limits of its powers in both constitutional terms. Moreover, administrative, in the second oversight of the caretaker government, and finally, a conclusion that included the most important findings and recommendations.

CHAPTER ONE

The legal framework for the concept of the idea of a caretaker government

The study of the legal idea of the caretaker government requires a statement of the position of constitutional jurisprudence on this theory as an entry point to define the concept and competencies of this government and within certain limits that are the management of daily issues. The constitutional foundation is the basis of this theory, so that we will divide this topic into two demands; in the first, we will show what a caretaker government is, and in the second, we will show the procedures for transforming into a daily caretaker government.

The first requirement

What is a caretaker government?

To determine what a caretaker government is, it is necessary to clarify the definition and basis of this type of government, and this is what we will show in the coming sections.

First branch

Definition of the caretaker government

A *caretaker government* is defined as a government transformed from a stable government with full powers to a government with limited powers, as it is the transitional period between the administrative rule of the executive authority and the limits of ensuring the continuity of government work within its administrative borders, due to an everyday constitutional practice that axiomatically results from a new political reality represented Either by the resignation of the government or by considering it by the resignation, the fulfillment of one of the conditions for resignation stipulated in the constitutions, especially those that adopt the parliamentary system, i.e., transformed from an ordinary government with full powers to a government with limited powers and for a temporary and transitional period.

Many countries have emphasized the theory of a caretaker government in their constitutions to avoid a vacuum in power and institutions. The Kuwaiti constitution of 1962 stipulated in Article (103) that if the prime minister or minister relinquishes his position for any reason whatsoever, he will continue to deal with the urgent affairs of his position until his successor is appointed.

Article (96) of the Algerian Constitution also stipulates that (if the government does not obtain the approval of the National People's Assembly again, it will be dissolved de jure, and the government will continue to exist in the conduct of ordinary affairs until the election of the National People's Assembly, within a maximum period of three months).

Also, Article (101) of the Spanish Constitution in paragraph (1) stipulates that (the government's mission ends after holding general elections or in the cases stipulated in the constitution regarding the withdrawal of Parliament's confidence from the government or upon the resignation or death of the prime minister) and the second paragraph of This article stipulates (the government whose mission has ended shall continue to conduct business until the new government assumes its duties).

Section Two

The basis of a caretaker government

The peaceful transfer of power principle is one of the essential principles on which modern political systems are based. It means the transfer of power through free and fair elections in which the citizen can determine who manages power. This principle is linked to political pluralism and the existence of political parties that exercise their activities in order to reach power. Hence, the caretaker government is a necessity that is presumed by the excellent functioning and regularity of the public service, as it is a middle stage between the resignation or dismissal of the government and the formation of a new government so that this does not cause a vacuum of power (6). Jurisprudence has differed in determining the basis of government conducting business.

Some believe that defining the scope of competence of the caretaker government is to handle current issues. The point of view of this trend is based on the fact that the system, whether it is parliamentary, adopts an assembly government, or is a hybrid system, one of its fundamental rules is the existence of the political responsibility of the government towards Parliament, And that the government cannot rule and exercise its powers without enjoying the confidence of the people's representatives. It follows from that that the government that never obtained the confidence of Parliament, or lost this confidence later on, is worthy of withdrawing from political life because the government can never rule Except under parliamentary oversight, which members of Parliament can conduct at all times through questioning and a vote of confidence in the government, and then forcing it to resign. It is impossible to overthrow the resigned governments because they are by the dead. It follows that the resigned government if it has secured the side of Parliament through its inability to punish its actions, can take all decisions against the will of the nation's representatives without possibly holding it any responsibility. There is no doubt that This is a complete

disregard for the parliamentary system, but that does not mean that the resigned government is stripped of its exercise of any powers because there is no rule without responsibility (7).

Moreover, some also see the idea of current issues by their nature. What is meant by current issues by nature or by their essence, those that are necessary for the proper functioning of public utilities, for decisions related to the everyday work of these utilities that every government undertakes, are considered to be current issues by their nature, as public utilities must work continuously. For departments to retain the authority to implement the various decisions, and for this reason, the ministerial signature on them is considered necessary to give them legitimacy in terms of jurisdiction so that if the departments stop performing their work, the state will be in complete paralysis. Continuing to complete these issues daily is considered as the oil that perpetuates the movement in the mechanical devices and prevents its sudden stop. It is automatic from the various administrative bodies, in which the work of the ministers is limited to merely placing their signatures on them. In conclusion, the ongoing matters by nature are those daily and familiar actions of the administrative apparatus or those routine actions that are accomplished in the lower levels of the administrative ladder and do not include any political dimension that may create effects future and, as a result, is the need for the public utility to continue to provide services to citizens (8).

Accordingly, the basis of the caretaker government is two ideas. The first stems from the constitutional system in place, especially in countries that follow the parliamentary system, which is based on a fundamental pillar that is the responsibility of the executive authority before the House of Representatives, i.e., the government's exercise of its powers is linked to its obtaining the confidence of the legislative authority. Moreover, since this trust is not only embodied when it is granted but extends its effects to the entire life of the government, it was evident that the exercise of the latter's authority was associated with the duration of its responsibility before the House of Representatives. Therefore, the government's resignation or its consideration as having resigned leads to the disappearance of this responsibility, which puts it outside the legislative authority's political control, consequently losing its ability to withdraw its confidence in the government. Moreover, since power is granted only to a party that is subject to accountability, and since the issue of no-confidence is the mechanism used in constitutional law to embody this principle of responsibility, it has become clear to us that limiting the powers of the resigned government is a logical consequence imposed by the parliamentary nature of the system. Moreover, the conduct of business, in the end, is something other than limiting the powers of the executive authority through the lack of oversight by the House of Representatives (9).

The second is the idea of ongoing issues related to the continuity of the public utility in continuously and steadily providing services.

The Second Requirement

Procedures or mechanisms that transfer the full-fledged government to a caretaker government

The concept of dual executive authority and cooperation and balance between the legislative and executive authorities are among the essential pillars of the parliamentary system. Therefore, the means of balance between the authorities in this system is the essential feature that distinguishes it. The dissolution of Parliament and the withdrawal of confidence are considered among this system's essential means of balance. In both cases, The government transformed from a full-fledged government into a caretaker government. The Iraqi legislator added in the internal system of the Council of Ministers No. 2 of 2029 another case in which the government turns to conduct daily affairs, as he called it in this system, which is the case of the end of the House of Representatives electoral cycle. The research in this matter The issue is related to the legal basis for the caretaker government, as we have previously stated, as the mechanism for transforming the government into a caretaker government is divided on legal bases of a constitutional-political nature, and constitutional texts and political factors are a source for those bases and legal bases of an administrative-regulatory nature imposed by administrative necessities. Moreover, the process was a source for it (10). So we will show these cases in the following sections.

FIRST BRANCH

Withdrawal of confidence

Raising the political responsibility of the government is the essence of the oversight process in the parliamentary system (11). It means the loss of the minister or the ministry of power whenever it loses the confidence of Parliament, which allows the minister or the ministry to resign whenever any minister or the ministry issues an action that requires accountability (12).

This is considered one of the most dangerous forms of parliamentary oversight of the ministry, and political responsibility is the interrogation based on a proposal from a certain number of deputies determined by law (13).

The questioning entails an individual responsibility targeting one of the ministers or a joint responsibility targeting the entire ministry, which is what we mean in this research. The motion of confidence from the government is the most widespread in the world's parliaments, and the effects of the interpellation are the withdrawal of confidence from the minister or the government.

Interrogation is an accusation, and if the accusation is proven against the government, then this government will undoubtedly become a source of distrust by Parliament (14).

Moreover, in Iraq, the Iraqi constitution of 2005 stipulated in Article (61/Second) that (1-a) the Council of Representatives can withdraw confidence, and it is not permissible to withdraw confidence from a minister except based on his desire or a request signed by fifty members following an interpellation discussion addressed to him, and no decision is issued on this request Except after at least seven days from the date of his submission. B- The

President of the Republic may submit a request to the Council of Representatives to withdraw confidence in the Prime Minister 2- The Council of Representatives, based on a request by five (1/5) of its members, to withdraw confidence from the Prime Minister. It is not permissible for him to submit This request only after an interpellation addressed to the Prime Minister and at least seven days after submitting the request. 3- The Council of Representatives decides to withdraw confidence from the Prime Minister from most of its members. C- The ministry is considered resigned in the event of withdrawal of confidence from the Prime Minister. D- In the event of a vote of no confidence in the entire Council of Ministers, the prime minister and the ministers shall continue in their positions to run daily affairs for a period not exceeding thirty days until the formation of the new Council of Ministers by the provisions of Article (76) of this constitution). From the above text, the Iraqi constitution grants the House of Representatives the right to withdraw confidence from the government or one of its members, a means of parliamentary oversight in the parliamentary system. When confidence is withdrawn from the government, this government turns into a caretaker government for a period not exceeding thirty days until a council is formed. New ministers, as stipulated in the constitution, are the first way a fully empowered government is transformed into a government to conduct daily business in Iraq

CHAPTER TWO **Parliament dissolved**

The dissolution of Parliament means ending the Parliament's term of office before the end of the legal term prescribed for the representation of this Parliament (), and it is one of the most dangerous types of control exercised by the executive authority over the legislative authority.

The Iraqi constitution of 2005 took this right. It gave it to the executive authority, as Article (64) of the constitution in force states (First: The House of Representatives shall be dissolved by an absolute majority of its members at the request of one-third of its members, or from the Prime Minister and with the approval of the President of the Republic The Council may not be dissolved during the interrogation of the Prime Minister. Second: When the Council of Representatives is dissolved, the President of the Republic calls for general elections within a maximum of sixty days from the date of dissolution.

It is clear from the above text that the Iraqi constitution entrusted the right to initiate a proposal to dissolve the House of Representatives to one-third of its members. It also authorized the Prime Minister to propose the dissolution of the House of Representatives, and the constitution stipulated that the President of the Republic approve this proposal and then the approval of the absolute majority of the members of the House of Representatives to dissolve Parliament.

In the case of the dissolution of the House of Representatives, the Council of Ministers is considered resigned. It continues to run daily affairs, and this is the second method stipulated in the Iraqi constitution of 2005 to transform the government into a caretaker government for daily business. The constitution specified a maximum period of sixty days for the President of the Republic to call for general elections in the country, but If elections are not held within sixty days, what is this government's fate in conducting daily business? Do you continue to conduct daily affairs, or is there another procedure?

The constitution did not specify the penalty in the event of a violation of not holding elections within sixty days, and what is the fate of this government, which is a legislative veto in the constitution. The Iraqi legislator has added another case to cases of the government turning to a caretaker government, which is the case of the end of the electoral cycle for the House of Representatives, as the internal system of the Iraqi Council of Ministers No. (2) of 2019 stipulates that (the Council of Ministers continues to run the daily affairs of the state until the formation of the new government in The following cases: A- The end of the electoral cycle for the House of Representatives) but what we notice in practice is the delay in the formation of Iraqi governments after the elections for long periods due to the nature of the political system in Iraq, which requires consensus between the winning blocs, as well as electoral appeals and the consequent re-counting and sorting. All of this led to exceeding the constitutional deadlines for forming the new government with the end of the government's term after the elections and the transformation of this government into a government to run daily affairs, noting that this situation was not stipulated in the Iraqi constitution of 2005, but was stipulated in the internal system of the Council of Ministers No. (2) Of 2019.

The Second Topic

The powers of the caretaker government and its oversight

Determining the powers of the caretaker government based on the withdrawal of confidence from this government, the dissolution of Parliament, or any other method by which the full-fledged government is transformed into a caretaker government stipulated in the Constitution or the legislation in force in this or that country. It is a critical issue and has its constitutional and legal effects. The government continues to carry out the actions required by the process of continuity of public utilities in the state regularly and steadily by the principle of the continuity of the state. The theory of the caretaker government requires the survival of the government in order to carry out the actions that preserve the status of the state in the work of its institutions and the continuation of the work of these institutions in providing services to citizens. However, those actions that the caretaker government takes are not yet politically charged since this government was not politically responsible before Parliament Because it did not gain the confidence of this Parliament to exercise its political control over this government, or it has lost the confidence of this Parliament. Therefore there is no political responsibility for this government before this Parliament.

However, in this matter, there are many problems with defining the actions and behaviors to which the concept of conducting business applies and how to define these actions, and the issue of oversight is also problematic, so what kind of oversight is practiced on this type of government?

Many of the actions carried out by this type of government require accountability when exceeding the limits of its constitutional and legal powers. Some circumstances require exceptions from the caretaker government. Was there an imminent danger in the country that could only be addressed by taking urgent and quick measures that exceeded the limits of the caretaker government's competence?

All these questions need answers, so that we will divide this topic into two demands. In the first, we will deal with the limits of the powers of the caretaker government, whether in the constitutional or administrative field. As for the second requirement, we will show the oversight of the caretaker government.

The First Requirement

The limits of the powers of the caretaker government

We have previously stated that countries differ in adopting a specific political system. Some countries adopt the presidential system, some adopt the assembly government, some adopt the mixed system, and some adopt the parliamentary system, which is the concept of cooperation and balance between the legislative and executive powers as one of the essential pillars of this system.

Iraq has adopted the parliamentary system in the Constitution of the Republic of Iraq for the year 2005, as the first Article of it stipulates (the system of government in it is republican, representative, parliamentary, and democratic, and this Constitution is a guarantor of the unity of Iraq). The concept of balance between the legislative and executive powers is achieved through many means that each possesses. An authority in the face of the other authority to prevent it from exceeding the limits of the competence of each of these authorities, and one of the most important of these means is the withdrawal of confidence and the dissolution of Parliament.

It is self-evident that if the Parliament is dissolved, the government that won the confidence of this Parliament will turn into a caretaker government or a government dealing with daily affairs, as the Iraqi constitutional legislator calls it.

Moreover, the theory of the caretaker government aims to clarify the limits of the competence of this type of government so that we will show in this topic the limits of the competence of the caretaker government by Iraqi legislation in two requirements.

First branch

The power of the caretaker government in the constitutional field

The principle of state continuity requires that the outgoing government, for one of the reasons previously mentioned, continue to run daily affairs until the contexts stipulated by the legislator form the new government.

The competence of the caretaker government in the constitutional field can be divided into two parts, the first is related to its powers in the objective time aspect, as the caretaker government is limited to a certain period, so some defined the caretaker government as (a non-political transitional government) to run things. Formal and administrative in the period between the resignation of a ministry and the formation of a ministry that will succeed it (16).

As for Iraq, the Iraqi Constitution for the year 2005 stipulates in Article (61 / VIII / D) that (in the event of a vote of no confidence in the entire Council of Ministers, the Prime Minister and the ministers shall continue in their positions to run daily affairs for a period not exceeding thirty days until the Council of Ministers is formed. New by the provisions of Article (76) of this Constitution).

Article (64/Second) also stipulates that (when the House of Representatives is dissolved, the President of the Republic shall call for general elections within a maximum of sixty days from the date of dissolution.

The two texts above that were mentioned in the Iraqi Constitution in force stipulated the powers of the caretaker government in terms of time and set time limits for the powers of the caretaker government in the Constitution, as the situation put the withdrawal of confidence from the government for a period not exceeding thirty days to form a new cabinet and by the provisions of Article (76) of the Constitution (17).

As for the case of Parliament being dissolved, the Constitution specified a maximum period of sixty days from the date of dissolution. The President of the Republic calls for general elections in the country. During this period, and until the new government is formed, the Council of Ministers will resign and continue to run daily affairs.

The internal system of the Iraqi Council of Ministers No. (2) for the year 2019 stipulated in Article (42/a) a third temporal case that was not mentioned in the Constitution, which is the case of the end of the electoral cycle for the House of Representatives.

The constitution stipulates objective limits to the caretaker government. Nevertheless, the constitutions differed in the constitutional systems regarding objectively defining the caretaker government's competencies. Civil law, and according to this theory, the government retains all its powers during the dissolution of Parliament as one of the essential foundations for the transformation of the government, which is a caretaker government and does not move its political responsibility before Parliament, and in view of the consequences of applying the rule of complete competence of the caretaker government with the characteristics of the parliamentary system and that one of the characteristics of this system It is Parliament's oversight of the government's actions, so many constitutional systems went in their constitutions to specify the competence of the caretaker government by stipulating it (18). Referring to the constitutional texts in Iraq related to the caretaker government, we find that the Iraqi constitutional legislator

included the term (conducting daily affairs), and it is understood from this term that the constitution wanted the powers of the government during the caretaker period to be specific and not complete.

However, the question is, if the periods stipulated in the constitution have ended and the new government has yet to be formed, will the caretaker government remain incomplete, or will its full powers return since the conduct of daily affairs is limited to a specific period? This is a legislative deficiency that requires intervention by the legislator, just as the decision of the Federal Supreme Court No. (121 / Federal / 2022) did not address this case, and some can interpret the absence of a constitutional text to enable the government to be fully empowered due to the absence of a constitutional text ruler in this aspect. However, we can respond that the constitutional norm as a basis for a caretaker government has moved in the direction that the government remains a caretaker government even if the constitutional periods have expired. There has been no modification to the terms of reference of these governments.

SECTION TWO

The power of the caretaker government in the administrative field

What is meant by the authority of the caretaker government in the administrative field is its power to issue organizational or regulatory administrative decisions and individual decisions. Individual administrative decisions, in principle, are considered among the urgent daily issues because they are not considered in terms of their subject matter of influential importance. However, these decisions are subject to exceptions, for example, about the appointment of those with higher degrees in the state, which bear a political nature, the internal system of the Iraqi Council of Ministers No. (2) For the year 2019, this prohibition was mentioned, and the daily caretaker government was prevented from appointing senior positions in the state and exempting them from them. In the field of organizational and administrative decisions, these decisions are abstract general rules and explicitly express the will of the public authority to regulate a specific matter. We believe that these decisions enable the caretaker government to issue such decisions if their purpose is to organize daily matters to maintain regularity and order. Public utilities in the country without these decisions being of a long-term nature, but rather to deal with urgent matters during a specific period. There is no doubt that the daily caretaker government expands its concept in exceptional circumstances, and what is meant by exceptional circumstances are unusual circumstances such as civil or international wars or natural disasters such as floods, earthquakes, etc., or the spread of a disease or epidemic that threatens public health (19).

Accordingly, the concept of a caretaker government changes when it comes to protecting the state, preserving rights and freedoms, and fulfilling international obligations.

As for Iraq, there are no legislative texts regulating the power of the caretaker government in such cases, which is considered a legislative shortcoming, but we believe that if we refer to the text of Article (61 / Ninth / C) of the Constitution of the Republic of Iraq for the year 2005, which states (authorizes the Prime Minister The necessary powers that enable him to manage the affairs of the country during the period of the declaration of war and the state of emergency, and these powers are regulated by law in a manner that does not contradict the constitution) as well as the order issued by the Coalition Provisional Authority (Order for Defense of National Safety) No. (1) of 2004, which regulated everything related to With the powers of the government in a state of emergency, noting that these texts speak of the government absolutely, so in the case of enacting a law by the constitution, it must take into account the powers of the caretaker government in exceptional circumstances.

The second requirement

Oversight of the caretaker government

Realistically, the caretaker government can go beyond the limits of its constitutional and legal powers, which puts those businesses that exceed the limits of its powers under control. What is this supervision? Is it similar to the oversight mechanisms of the government with full powers, or is it oversight of another kind?

As is well known, censorship is divided into types. There is parliamentary oversight, judicial oversight, and public opinion oversight. The forms of oversight differ according to the body that exercises it, as well as the different nature and extent of this oversight.

Parliamentary oversight means fact-finding on the part of the legislative authority for the actions of the executive authority to uncover the lack of proper implementation of the general rules in the state and to determine who is responsible for that and hold him accountable (20). However, does this definition apply to the caretaker government in all cases where the full-fledged government turns into a caretaker government, such as the withdrawal of confidence, the dissolution of Parliament, or the end of the electoral cycle?

The Iraqi constitution of 2005 did not stipulate the organization of parliamentary oversight over the caretaker government in all cases in which the full-fledged government turns into this type of government, which is a legislative shortcoming. Like France, it confirms the possibility of asking Parliament questions to the caretaker government daily (21). However, although the means of parliamentary oversight are useless from a legal and political point of view, it is an essential means of exposing the abuse of powers by the caretaker government in front of public opinion.

As for the judicial oversight over the daily caretaker government, after we know that parliamentary oversight may be weak or nonexistent from a legal and political point of view, judicial oversight emerges as a more effective oversight body for this type of government (22). Whether the administrative or constitutional judiciary exercises this oversight.

As the administrative judiciary exercises the task of examining the decisions issued by the caretaker government and indicating the extent of their legality and not exceeding the government's competencies, as well as the supervision of the Federal Supreme Court on the decisions issued by the caretaker government daily when they exceed the scope of its legal and constitutional powers, including the explanatory decision of the Federal Supreme Court issued in 15 / 5/2022 of the number 121 / federal / 2022, as the Federal Supreme Court went in the direction that narrows the scope of the powers of the caretaker government, which is based on the idea that the government's competencies revolve around expanding and receding with the availability of Parliament's confidence in this government.

This decision was issued based on a request received from the President of the Republic to interpret the phrase (daily matters) contained in Article (64 / Third) of the Constitution of the Republic of Iraq for the year 2005, which concluded that it is not one of the daily tasks of the caretaker government to propose draft laws.

Thus, the oversight of the judiciary, whether constitutional or administrative, is more effective in the case of a government with full powers being transformed into a caretaker government.

Political censorship, or censorship of public opinion, is practiced in all kinds of governments since the people are the source of authority and exercise their role in censorship through the available means of censorship.

CONCLUSION

After we finished studying the research (legal framing of the limits of the powers of the caretaker government in Iraq) after the end of this tagged research and reached actual results and recommendations that contribute to the development of the legislative system for that, we found it appropriate to stand on the most important conclusions drawn from the aspects of the research, in addition to This put forward the most critical recommendations related to addressing the imbalance that may occur in some texts.

RESULTS

1- The caretaker government is defined as the government that represents the middle stage between the resignation of the government or considering it resigned and the formation of a new government so that there is no power vacuum in its executive side, especially in countries that follow the parliamentary system

2- The basis of a caretaker government can be found in two ideas; the first goes to linking this type to the existence of its political responsibility towards Parliament, and therefore the government that did not obtain the confidence of Parliament or lost this confidence later, it is not possible to exercise parliamentary control over it and then The powers of the executive authority throughout lack of confidence and oversight by the House of Representatives over it are limited powers, and this is a natural result of the absence of political oversight. As for the second idea of the basis of the caretaker government, it is the idea of current issues by nature and related to the continuity of the public utility in providing services continuously and steadily.

3- The government, with full powers, will be transformed into a caretaker government upon the dissolution of Parliament, the withdrawal of confidence, or upon the end of the electoral cycle for the Council of Representatives, as stipulated in the Iraqi constitution 2005.

4- The Iraqi Constitution of 2005 did not specify the penalty if elections are not held within (60) days or in the event of the dissolution of the House of Representatives by the executive authority, which is a legislative shortcoming that must be avoided because of its effects on the reality of the ruling system and the vacuum it causes.

5- The Iraqi constitution did not specify the government's fate after the expiration of a period of (60) days. Will it remain to conduct daily business, or will its work end, which is a legislative deficiency in the constitution?

RECOMMENDATIONS

1- We recommend that a text be placed in the Iraqi constitution specifying the penalty if the executive authority fails to hold elections within (60) days based on the text of Article (64 / First and Second) of the constitution and that the penalty is to dissolve the executive authority. The Federal Court conducts the public elections over a specified period.

2- We recommend that the Iraqi constitutional legislator oblige the Parliament to form a government with specific periods after the elections are held and approved and that there be a penalty if these constitutional periods are exceeded because they are part of the world order. It is not possible to agree on what contradicts them.

3- Putting a text in the constitution that shows the state of the government after the end of the periods for conducting daily business, as it affects the country's situation in all political, security, economic, and social aspects.

4- Placing a text in the constitution that gives the caretaker government in exceptional circumstances full powers by which it can face such circumstances as far as it is concerned with protecting the state, preserving rights and freedoms, and implementing its international obligations.

REFERENCES

1. Dr. Mohieddin Al-Shuhimi, The Concept of Caretaker Government, A Comprehensive Study, research published on the website of the Strategic File Magazine on the Internet at the link: <https://strategicfile.com/> Visit date 1/5/2023.
2. See the Kuwaiti Constitution of 1962.
3. See: Algerian Constitution of 1996 amended in 2020.

4. See: The Spanish Constitution of 1978 was amended in 2011.
5. See the Moroccan constitution of 2011.
6. Dr. Ahmed Hassanein, Ehab Mohamed, The Constitutional System of the Business Administration Government, Journal of Legal and Economic Research, Menoufia University, Issue 51, Part One, May 2020, p. 2.
7. Link [https://web.facebook.com / Constitutional and Administrative law?locale=ar](https://web.facebook.com/Constitutional%20and%20Administrative%20law?locale=ar) AR
8. Ibid., same page.
9. Wissam Al-Lahham, Conducting Business: From the Constitutional Obligation to Political Arbitrariness, a research published on the website of the Legal Agenda Magazine on the Internet at the link: <https://legal-agenda.com/>, date of visit 5/1/2023.
10. Dr. Khitam Hammadi Mahmoud, The Constitutional Legitimacy of the Decisions of the Caretaker Government in Light of the Texts of the Constitution of the Republic of Iraq for the year 2005, research published in Tikrit University Journal of Law, Year (6) Issue (1) Part (1) Year 2021, p. 334.
11. D.C.M. Yardley: Introduction to the British constitutional law, fourth edition, butter, worths, London, 1974, p86
12. Othman Abd al-Malik Saleh, Parliamentary Oversight of the Work of the Administration in Kuwait, Journal of Laws, Fifth Year, Fourth Issue, 1981, p. 719.
13. Dr. Dawood Al-Baz, Political Systems of the State and Government, Dar Al-Fikr Al-Jami`, 2006, p. 352.
14. Dr . Shamran Hammadi, Political and Constitutional Systems, Al-Tabaa and Al-Nisr Al-Ahlia Company, Baghdad, Iraq, 1994, p. 84.
15. Dr. Mohsen Khalil, Egyptian Constitutional Law, and Constitutions, New University Publishing House, Alexandria, 1996, p. 596.
16. Dr. Muhammad Shtayyeh, Encyclopedia of Palestinian Terms and Concepts, Dar Al-Jalil for Palestinian Studies and Research, Amman, 2011, p. 287.
17. See the text of Article (76 / first, second, third, fourth, fifth) of the Constitution of the Republic of Iraq for 2005.
18. Dr. Alaa Abdel-Motal, Dissolving Parliament in Comparative Constitutional Regimes, Dar Al-Nahda Al-Arabia, Cairo, 2004, p. 337 and beyond.
19. Dr. Ali Hadi Hamid Shakrawi and d. Ismail Sasaa Ghaidan, Legal Regulation, and Exception Systems, a research published in Al-Mohaqiq Al-Hali Journal for Legal and Political Sciences, College of Law, University of Babylon, Volume 6, Issue 3, 2014, p. 16.
20. Dr. Ehab Zaki Salam, Political Oversight of the Actions of the Executive Authority in the Parliamentary System, World of Books, Cairo, 1983, p. 17.
21. Dr. Baqir Abdul-Kadhim Ali Al-Karawi, Oversight of the Ministry of Daily Affairs, research published in the Journal of Arts, Literature, Humanities, and Sociology, Issue No. 56, Al-Sajer in August 2020, p. 133.
22. Farouk Ahmed Khammas, Supervision of Administration Work, Dar Al-Kutub for Printing and Publishing, Iraq, Mosul, 1988, p. 83.

THE BOOKS

1. d. Ihab Zaki Salam, Political Oversight of the Actions of the Executive Authority in the Parliamentary System, World of Books, Cairo, 1983.
2. d. Dawood Al-Baz, Political Systems of the State and Government, University Thought House, 2006.
3. d. Shamran Hammadi, Political and Constitutional Systems, Al-Tabaa and Al-Nisr Al-Ahlia Company, Baghdad, Iraq, 1994.
4. d. Alaa Abdel-Motal, Dissolving Parliament in Comparative Constitutional Regimes, Dar Al-Nahda Al-Arabia, Cairo, 2004.
5. d. Mohsen Khalil, Egyptian Constitutional Law and Constitutions, New University Publishing House, Alexandria, 1996.
6. 6- Dr. Muhammad Shtayyeh, Encyclopedia of Palestinian Terms and Concepts, Dar Al-Jalil for Palestinian Studies and Research, Amman, 2011.
7. 7- Farouk Ahmad Khammas, Censorship of Literary Works, Dar Al-Kutub for Printing and Publishing, Mosul, Iraq, 1988.
8. 8- D.C.M. Yardley: Introduction to the British constitutional law, fourth edition, butter, worths, London, 1974.

JOURNALS AND PERIODICALS

- 1- Dr. Ahmed Hassanein, Ehab Mohamed, The Constitutional System of the Business Administration Government, Journal of Legal and Economic Research, Menoufia University, Issue 51, Part One, May 2020.
- 2- Dr. Baqir Abdel-Kazem Ali Al-Karawi, Oversight of the Ministry of Daily Affairs, research published in the Journal of Arts, Literature, Humanities and Sociology, Issue No. 56, issued in August 2020.

- 3- Dr. Khitam Hammadi Mahmoud, The constitutional legitimacy of the decisions of the caretaker government in light of the provisions of the Constitution of the Republic of Iraq for the year 2005, a research published in the Tikrit University Journal of Law, Year (6), Issue (1), Part (1), Year 2021.
- 4- Dr. Ali Hadi Hamid Shakrawi and d. Ismail Sasaa Ghaidan, Legal Regulation, and Exception Systems, research published in Al-Mohaqqiq Al-Hilli Journal of Legal and Political Sciences, College of Law, University of Babylon, Volume 6, Issue 3, 2014.
- 5- Othman Abdel-Malik Saleh, Parliamentary Oversight of the Administration's Work in Kuwait, Journal of Laws, Fifth Year, Fourth Issue, 1981.

WORLD WIDE WEB

- 1- Ali Hamid Kazem, Journal of Constitutional and Administrative Law, Stockholm, Sweden, an article published on the journal's page on the Internet at the link [https://web.facebook.com / Constitutional and Administrative law?locale=ar](https://web.facebook.com/Constitutional%20and%20Administrative%20law?locale=ar) AR.
- 2- Wissam Al-Lahham, Conducting Business: From Constitutional Obligation to Political Arbitrariness, a research published on the website of the Legal Agenda Journal on the Internet at the link: [https://legal-agenda.com./](https://legal-agenda.com/) Date of visit 1/5/2023
- 3- Dr. Mohieddin Al-Shuhimi, The Concept of Caretaker Government, A Comprehensive Study, research published on the website of the Strategic File Magazine on the Internet at the link: [https://strategicfile.com./](https://strategicfile.com/) Date of visit 1/5/2023

CONSTITUTIONS, LAWS, AND DECISIONS

- 1- The Kuwaiti Constitution of 1962.
- 2- The Iraqi Constitution of 2005.
- 3- The Spanish Constitution of 1978 was amended in 2011.
- 4- The Moroccan Constitution of 2011.
- 5- The Algerian Constitution of 1996, amended in 2020.
- 6- The internal system of the Iraqi Council of Ministers No. (2) of 2019.
- 7- The explanatory decision of the Federal Supreme Court No. 121 / Federal / 2022 on 5/15/2022.