

## Constitutional Organization of the Caretaker Government

### التنظيم الدستوري لحكومة تصريف الاعمال

#### الكلمات الافتتاحية :

تصريف الأعمال ، الحكومة ، انتهاء الصلاحية

#### Keywords :

Caretaker, government, expiration

**Abstract:** Objectives: Determine the roles of the caretaker government, being those interim governments that exist in case of necessity, as they exist in light of the lack of constitutional powers and because they have specific competencies for the purpose of managing state affairs . Methods: This Study is based on the comparative method and analytical study of the legal and constitutional texts that were said in this regard and through this research. Results: reached The most important of which is that the caretaker government exists only under a parliamentary system, a government of necessity that imposes itself on the ground and because Iraq, like other developing countries, has passed many stages achieved by that government, including the government of Mr. Mustafa Al-Kazemi, who tried to take over the reins after the demonstrations and for a period after the elections. Conclusion: the governments of the caretaker was a special case characterized by parliamentary political systems aimed at conducting daily affairs as they remain subject to constitutional control by the Federal Supreme Court and it was well done when

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defining the concept of this government, albeit absolutely, but what the Federal Court did was to define the role played by this government .

#### الملخص

الأهداف: تحديد الأدوار التي تقوم بها حكومة تصريف الأعمال كونها تلك الحكومات المؤقتة التي وجدت في حالة الضرورة فهي توجد في ظل الافتقار للصلاحيات الدستورية ولأنها ذات اختصاصات محددة لغرض تسيير شؤون الدولة. المنهجية: فهي تقوم على المنهج المقارن والدراسة التحليلية للنصوص القانونية والدستورية التي قيلت في هذا الشأن . النتائج: وأهمها أن حكومة تصريف الأعمال لا توجد إلا في ظل نظام برلماني. حكومة ضرورة تفرض نفسها على الأرض. ولأن العراق كغيره من الدول النامية اجتاز مراحل عديدة حققتها تلك الحكومة. ومنها حكومة السيد مصطفى الكاظمي الذي حاول تسلم زمام الأمور بعد التظاهرات ولفترة بعد الانتخابات. الخلاصة : فإن حكومات تصريف الأعمال كانت حالة خاصة تميزت بالأنظمة السياسية البرلمانية التي تهدف إلى تسيير الشؤون اليومية حيث تظل خاضعة للرقابة الدستورية من قبل المحكمة الاتحادية العليا. وقد أحسنت عند تحديد مفهوم هذه الحكومة ولو بشكل مطلق. ولكن ما فعلته المحكمة الاتحادية هو تحديد الدور الذي تلعبه هذه الحكومة. المقدمة :

The term caretaker government has raised a wide controversy among political and legal jurisprudence because there are many gaps in this matter, especially from a legal and practical point of view according to the constitutions of the countries of the world, despite the importance of the constitution as it stipulates the need to continue the administration and public utilities in the state. Perhaps among the difficulties facing its application on the ground is the lack of jurisprudential studies and the practical aspect of its application because most constitutions do not have a clear and accurate definition of the concept of caretaker despite the recognition of its existence as a realistic fact,

there are those who tried to codify this situation in the constitution by including constitutional rules that regulate and address the situation of those governments. When the government submits its resignation at the end of its constitutional mandate or the end of its legislative term, there is a period of time that may be long or shorter until the new government is formed, so the dismissed government continues to perform its work under the name of the caretaker government, which has imposed itself as a realistic situation in political life and repeatedly in order to take over the management of public affairs in the state and not to leave a political vacuum It would burden the citizen, so this government manage public utilities by supervising and following them up in a way that achieves a temporary political stability. However, the work of that government is not absolute, but rather is restricted and limited to the limits of the conduct of public affairs and in a way that does not lead to the expansion of new decision-making, but it is limited to the conduct of public affairs only, and this is what is constitutionally recognized by what was addressed by some jurists and what has been emphasized in some experiences, which although few, but confirmed general rules, including that this government is restricted and not absolute, and this is agreed upon despite the different nature of countries that are going through such a difficult situation, which is between a rock and a hard place, the hammer of the people and the anvil of constitutional controls. From such a situation requires, without a doubt, research and exploration of judicial precedents and jurisprudential opinions, which, although few, but they try to fill the shortage or remedy the deficit in some constitutional texts of the countries of the world that are going through

such a situation by determining the meaning of the caretaker government and finding solutions to the various issues that arise under the circumstances faced by ordinary and extraordinary. **The Importance of the Study:** This study comes in an attempt to achieve interest regarding the statement of the nature of the caretaker government and the tasks entrusted to it by addressing it from the jurisprudential and constitutional point of view and indicating the extent of its application in the Iraqi constitution 2005 constitution) and the role of the Federal Supreme Court as well in this regard, especially in those periods that Iraq is going through from the end of the mandate of the government and the failure to form a new government, which may last for months, or more after the democratic changes witnessed in light of the political transition with the end of the dictatorship era.

**Objectives of the study:** This study aims to clarify the meaning of the caretaker government in terms of its existence and the tasks entrusted to it, as it undertakes the statement of the legal and constitutional aspect of its powers and what the tasks that are entitled to be carried out according to what has been done in some countries according to the constitutional contributions that tried to cover this topic.

**The Problem of the Study:** There is a divergence in the views of constitutional law scholars at the international level and at the local level regarding the caretaker government in terms of its definition, but also until the period of time in which this government exercises its competencies. and there are some questions in this regard, including:

- 1-Introducing the caretaker government and what its competencies are.
- 2- Did the Iraqi constitution include a provision for the caretaker government?
- 3- Does the Federal Supreme Court have the right to draw the boundaries of the caretaker government?

**Study Methodology:** Adopting the descriptive and analytical approach by analyzing the legal texts to show the nature of this government and its competencies, and it also uses the comparative approach to present a model for some countries that have adopted this according to the following:

**The first section: the nature of the caretaker government**

**First Requirement : Introducing the Caretaker Government**

**Second Requirement : Cases of the Caretaker Government**

**The second section: the competencies of the caretaker government and its control**

**First Requirement : Competencies of the Caretaker Government**

**The second requirement: the control exercised on this government**

**Section I**

**What is the caretaker government:** Most constitutions were keen to determine the powers and powers that the executive authority has to do in view of the important role it plays away from the interference of other authorities, as governments elected by the people may turn into governments of business as a result of political circumstances that prevent achieving consensus on the form of the new government

when the term of the previous government ends, so we will try in this requirement to introduce the caretaker government in the first demand and in the second statement.

**First Requirement: Definition of the caretaker government:**  
In view of the different views regarding this type of government and the difference between the countries of the world in its definition, we try in this requirement to clarify the jurisprudential definition and then the constitutional definition.

**Subchapter I: Jurisprudential Definition of the Caretaker Government :** Caretaker government in the ABSC of constitutional jurisprudence is not a new concept, it is noted that it is known in advanced democracies when outgoing governments choose to perform their duties as transitional governments; and the existence of interim governments has been proven in European democracies, when the current government rules the country until power is transferred to the newly elected government through elections. European countries regularly have governments. Transitional, partisan or non-partisan, when no party has a majority in the newly elected Parliament . (Habeish, 2013, p. 21) In such a case, the parties continue coalition negotiations that may take months during this period, often appointing a non-partisan or technocratic government to keep the state functioning while there is no permanent government. It is evident that the work of governments under certain cases and special circumstances differ from those normal circumstances in which they exercise all their powers, as they are considered restricted and incomplete, i.e. incomplete powers, and thus they assume the conduct of daily affairs without having the

right to issue decisions that would establish future rights. (Mighty, 2016, p. 5) Therefore, there are several attempts to deal with this type of government, although it differs in the formal wording, but it agreed objectively to limit the scope of powers of that government as it is limited and not absolute powers and is not entitled to establish any future right to the extent that it conducts the daily life affairs of citizens. Some have defined this government as the government that carries out the normal daily business that the government practices to run its public facilities, i.e. limiting the work practiced by the government to daily activities only, the usual daily behaviors that would ensure the continuity of the work of the public utility. (Hanoun, 2016, p. 24) defined it as a government transformed from an ordinary government with full powers to a government with limited powers within the limits of ensuring the continuity of government work within its administrative limits due to the lived political conditions ; or it is the system applied to all resigned governments because they do not have full powers, except that there is in return for that moving their political subordination within the conditions specified in the constitution. (Saleh, 2017, p. 161) However, others have defined the caretaker government as the one that manages urgent current matters that cannot be described as political matters; or those actions that are related to the daily activity of the administration, except for actions that lead to the permanent modification of a public apparatus, utility or legal system. (Ali, 2007, p. 16) Through the previous presentation of the definitions contained regarding caretaker governments, we found that there are assertions that such governments are restricted in terms of authority and competencies, and they exist in a period characterized by a kind of political stalemate or

disagreement between blocs or political parties on who assumes the position of prime minister and the formation of the government, and therefore we see that the most appropriate definition of the caretaker government is "Those governments that exist in exceptional circumstances in which countries live, which makes their competencies restricted competencies and powers incomplete to the extent through which they can conduct their daily lives to ensure the continuation of the work of public utilities (Ali, 2007, p. 16)

Subchapter II: Constitutional Definition of the Caretaker Government: Ensuring the functioning of state facilities with their institutions obliges resigned or outgoing governments to fulfill their financial obligations towards these institutions to ensure their proper functioning in order to achieve public justice, which makes governments committed to remaining in their work even if they lose their legitimacy with all the powers they enjoyed. (Metwally, 1975, p. 189) Regarding the statement of the meaning of these governments, the constitutional history shows that there are some constitutions devoid of providing a definition of the caretaker government in return, so there are those who knew this type and its definition was according to the nature of the state and the prevailing political system in it, there are countries that have identified the caretaker government in a narrow and limited scope, including, for French Constitution of 1946 determined the terms of reference of the government during the caretaker period, the ministry remains in place to face a transitional phase does not undertake only the conduct of current affairs as it undertakes the supervision of the elections for the new National Assembly that there is an



exception related to the Prime Minister and the Minister of Interior from the composition of this ministry as they are not entitled to nominate as the President of the Republic delegates the President of the National Assembly to the presidency of the Council of Ministers to assume the latter in turn choose a new Minister of Interior. (Mohy Religion, 2023) In Iraq, the constitution of 2005 was formulated under different circumstances than the current ones. Most of those involved in its creation, who are now advocating for its amendment, are at the forefront of calling for its modification due to the changing political situation. The constitution has been violated on multiple occasions due to constitutional provisions that are no longer suitable for the current stage. One of the most notable provisions that require amendment is the requirement for the approval of a majority of two-thirds of the total number of members of the Council of Representatives. This majority assumes the presence of two-thirds of the total number of members as a prerequisite for convening a session of the Council of Representatives, followed by a vote to obtain the approval of the same number of members. For example, Article 52 states that the Council of Representatives shall decide on the validity of the membership of its members by a majority of two-thirds of its members. Similarly, Article 65 stipulates that the Council of Union Law should be enacted by a majority of two-thirds of the members of the Council of Representatives. Article 70 states that the Council of Representatives should elect the President of the Republic by a majority of two-thirds of its members. Article 92 requires. The Federal Supreme Court Law to be enacted by a majority of two-thirds of the members of the Council of Representatives. These provisions practically show how the

requirement to achieve a quorum for the Council's session and the approval of two-thirds of the members of the Council for a specific position or legislation leads to a political and constitutional crisis. This is evident from the inability of the Council of Representatives to enact the Council of Union Law and the Federal Supreme Court Law since the constitution came into effect in 2005 until now. The requirement for the election of the President of the Republic by a majority of two-thirds of the total number of members of the Council of Representatives has caused the current political crisis in Iraq. The Council of Representatives cannot hold a session to elect the President unless a quorum of two-thirds of the total number of members is present, followed by a vote among the competing candidates for this position, as a first step requiring the winner to obtain a majority of two-thirds of the total number of members of the Council of Representatives. If none of the candidates achieves this majority, a competition will take place between the candidates who received the highest number of votes, which is the second step according to Article 70 of the constitution. Due to this constitutional restriction, the constitutional period of thirty days from the date of the first session of the Council of Representatives on January 9, 2022, expired. This period was specified by Article 72/2/b of the constitution for the President to continue exercising his duties until after the new elections for the Council of Representatives. We have entered a stage of judicial constitutional interpretation regarding the President's continuation in office until the election of a new President. The Federal Supreme Court had previously interpreted, through its decision No. 51/Federal/2010 issued on July 13, 2010, that the Presidency Council (which was performing the duties of the President at

the time) should continue to exercise the President's duties until a new President is elected, despite the constitutional violation (as described by the Court in the mentioned decision) of exceeding the specified period for the election of a new President. The Federal Supreme Court (in its new composition) followed the same approach in its decision No. 24/Federal/2022 issued on February 13, 2022, allowing the President to continue his duties until the election of a new President based on the necessities and public interest, despite the expiration of the constitutional period specified by Article 72/2/b. The most significant constitutional issue is the formulation of Article 76 of the constitution, which states that the President of the Republic shall assign the nominee of "the parliamentary bloc with the highest number" to form the Council of Ministers. The Federal Supreme Court, in its 2010 decision No. (25/Federal/2010) dated March 25, 2010, interpreted the concept of "the parliamentary bloc with the highest number" as follows: "Either the bloc that was formed after the elections through a single electoral list, entered the elections under specific names and numbers, and obtained the highest number of seats, or the bloc that formed from two or more electoral lists that entered the elections under different names and numbers and then merged into one bloc with a unified entity in the Council of Representatives. Whichever has the highest number, the President of the Republic assigns the nominee of the parliamentary bloc that obtained the highest number of parliamentary seats in the first session of the Council of Representatives to form the Council of Ministers." However, the new Federal Supreme Court went on to state (according to its formation) that the formation or composition of the parliamentary bloc with the highest number is not a

requirement in the first session, but it is allowed in any session of the Council of Representatives, based on decision No. (7 and its amendments 9 and 10/Federal/2022) dated February 3, 2022. Some specialists in constitutional law (whose opinion we agree with) argue that the term "the parliamentary bloc with the highest number" refers to "the list or bloc that wins the elections." They consider this interpretation to be the closest to the logic of electoral competition. Given the aforementioned, the Council of Representatives has a historical responsibility and a national duty to work on amending the aforementioned constitutional articles, especially since they are not controversial but rather subject to rephrasing to ensure that the country does not fall into a state of violation or constitutional vacuum in the future, by adopting the principle stated in Article 59 of the Constitution, which states that the quorum for holding sessions of the Council of Representatives is achieved with the absolute majority of its members, and decisions are made by a simple majority after achieving the quorum. This principle generally applies without specifying a "two-thirds majority of the members of the Council" wherever it is mentioned in the Constitution. It is also necessary to amend Article 76 and state a clear and non-contestable principle that the President of the Republic assigns the nominee of the bloc or list that wins the elections to form the Council of Ministers in the same session of electing the President of the Republic, after completing the constitutional election procedures. This would settle the ongoing debate since 2010 until now if the text is formulated precisely and clearly in the Constitution. (Dana Abd Decent o. c., 2007) Based on what has been mentioned, Iraq is one of the recently established countries with what is known as a caretaker government that

emerges for the aforementioned reasons.adopt democracy and the peaceful rotation of power after the changes that took place in 2003, as the first constitution that was developed to establish modern Iraq is the State Administration Law for the transitional period, which dealt with the idea of caretaker work, as Article (40 / b) stipulated: "In the event of a vote of no confidence in the entire Council of Ministers, the Prime Minister and ministers shall remain in office to carry out their work for a period not exceeding thirty days until the formation of the Council of Ministers in accordance with Article 38 above." Article 41 The Prime Minister shall exercise his daily responsibilities for the administration of the Government and may dismiss Ministers with the approval of an absolute majority of the National Assembly"...." It is noted that Iraq, like other countries that have adopted the method of narrowing the government in the period of conducting daily affairs of its powers and competencies, Accor" to the provisions of the constitution, which referred to the caretaker government and how it is formed, as Article 64 / II stipulate", "The President of the Republic, when dissolving the Parliament, calls for general elections in the country within a maximum period of sixty days from the date of dissolution, and the Council of Ministers, in this case, is resigned and continues to conduct daily affairs." What is understood from this is that the dissolution of Parliament leads to the inability of the House of Representatives to exercise its legislative and oversight powers in accordance with the text of Article 61 / I. "The House of Representatives shall be dissolved, by an absolute majority of its members, at the request of one-third of its members or at the request of the Prime Minister and with the approval of the President of the Republic, and the Council

may not be dissolved during the period of questioning of the Prime Minister." And the case of withdrawal of confidence from the ministry based on the provisions of Article 61 / VIII / a, b, f, c) and thus the government turns from a government full of powers to a caretaker government, which is an exception to the general principle, which requires that the government exercise all its constitutional powers and at the end of its mandate and readiness to choose a new government, the caretaker government must conduct daily affairs that ensure the continuation of the work of all state facilities and institutions. (Constitution, 2005)

**Second Requirement: Cases of the Caretaker Government :**  
The caretaker government is a reality that imposes itself and a distinct legal status as it is not just an idea, but it is one of the necessities of political life and its development, which requires its identification on the ground, even if the explicit constitutional provisions are absent on this in order to achieve the public interest and the need to ensure the management of public utilities in the state, although political life in most countries not going in one pattern, there are many storms that hit the countries of the world, including: The developing world and its countries, which makes it mandatory for those countries to adopt these governments, in the presidential system such as the system of the United States of America, we see that such a situation is not provided and there are other countries that have been stipulated in their constitutions, including Iraq, in the competencies of the caretaker government, are those that work when the government resigns. Was the resignation voluntary or due to the parliament's withdrawal of confidence from it? In both cases, the Government continues to act as required by the continuity of public utilities regularly

and steadily. That is, those that do not carry a political dimension, which cannot raise the responsibility of the government before the parliament, and push it to exercise control over its actions. If the main reason behind the government's refusal to take decisions with a political dimension is the loss of parliamentary oversight over the work of the resigned government, the existence of other cases in which parliamentary oversight is lacking or impossible to use raises the question of whether the theory of the conduct of current issues can be extended to these as well. Perhaps the most important of these cases is the case of the dissolution of Parliament, and the researcher will discuss both cases in the following two sections:

**Subchapter I: Withdrawal of Confidence from the Government:** As some call a no-confidence vote as it is a parliamentary procedure that would demonstrate that the elected parliament no longer has confidence in one or more members of the government appointed by the executive branch, and according to the normal course of affairs, governments are considered to resign from the date of acceptance of the resignation by the President of the Republic which makes its continuation a *fait accompli* that necessitates it to carry out the meals entrusted to it. Assessing the extent of the political and administrative success of the government depends on the political follow-up exercised by the parliament, since the government is accountable to the parliament because it is a representative of the people, as it has the right to control the executive authority in the performance of its duties. In case of violation, a vote of confidence, which is that parliamentary procedure that would prove that the elected parliament no longer has confidence in one or more members of the

appointed government as a result of the lack of confidence. The fact that parliament is charged with following up the political and administrative process of governments, as on the basis of which the political responsibility of the government is determined, the responsibility of the government before parliament entitles to monitor the ability of the government to implement the general policy that has been drawn up for it before, which it must pursue without the possibility of deviating from it or violating it, and that this does not entail the imposition of political responsibility; In the parliamentary system, the government resigns when it loses the confidence of parliament, and it also submits its resignation at the end of the legislative term. (Dana Abd Decent M. T., 2007, p. 118) In addition, the resignation of the government limits the scope of competencies that it is constitutionally entitled to exercise, as these competencies must be limited to the conduct of current issues, or those imposed by the state of urgency or the nature of the exceptional circumstances that the state is going through the work of this ministry is an agency until the candidate for the post is determined, and this is contrary to the withdrawal of confidence from the entire ministry, which puts the government in front of a caretaker situation. A question may arise here: Is the government considered to have resigned as soon as it is overthrown in parliament, or must a decision be issued by the head of state to accept the resignation? To answer this question, there are two tendencies: the first tendency that the resignation of the government produces its legal effects as soon as it is submitted to the head of state, and the second argues that the resignation is valid only from the date of acceptance by the head of state by an official decision. The determination of the date on which the



government moves from a full government to a caretaker government depends on the date of resignation, and the constitutions differed in that, some of which explicitly stipulated that the date of voting to withdraw confidence from the prime minister is the date of resignation, and accordingly the government is transformed from a fully fledged government to a caretaker government as a resigned, such as the Iraqi Constitution of 2005. (Mesrop, 2019)

**Subchapter II: Status of Dissolution of Parliament:** It is intended to end the term of the House of Representatives before the end of the legal period prescribed for its representative, i.e. before the end of the legislative term, and this right is one of the most dangerous rights that are against Parliament to ensure a balance between the legislative and executive powers. The dissolution of the executive authority of Parliament is the means of achieving guarantee. In parliamentary systems, there is no doubt that the parliamentary system is based on a basic pillar, which is the advancement of the ministry based on the confidence granted by Parliament by its majority, when it still exists, the government that Inspect the reason for its existence (Parliament) ceases to exist, but for the necessities of the functioning of public utilities remain committed to specific powers We can distinguish in this aspect between the resignation of the government because of the natural end of the House of Representatives, which is the end that takes place constitutionally at the end of its legally specified term, so the government submits its resignation and holds parliamentary elections, or because of mutual pressure between the government and Parliament, which leads to the overthrow of the government or the dissolution of

**Parliament and To know the legal status of the powers of the government when dissolving the parliament, the question arises about its competencies, does it have absolute powers like the governments that legitimately assume power or do they manage current affairs? Does this situation apply to the case of a government that withholds no confidence in it, submits its resignation and then asks the head of state to dissolve parliament? Does it have such a right or is it considered to be outside its competence to manage current matters? In fact, this issue seems to be a natural consequence of a difference of opinion on the basis for determining the competencies of the resigned government to manage current matters. (Dana Abd Decent o. c., 2007) In order to answer these questions, jurisprudence has differed in determining the competencies of the government that dissolves Parliament in two directions:**

**The first goes to determine the competencies of the government in this case by the rule of the conduct of current matters. Second, the government is recognized as having full authority when parliament is dissolved.**

**Section II: Competencies and oversight of the caretaker government : The permanence of the continuation of public utilities in the state is among the most important priorities that the state must ensure to carry out as it seeks since its existence through its executive authority and represented by the government to strive tirelessly to satisfy public needs and achieve the public benefit and this has not and will not happen except through the survival of those governments that resigned, whether at their request or the request of the House of Representatives to continue the work that takes care of the affairs of citizens, i.e. the conduct of daily affairs**

and here after those governments promised In the case of expired, it remains and remains for the conduct of daily affairs, and this makes it committed to the basic purpose of its existence, which is the conduct of daily affairs far from fateful decisions, which necessitates the statement of the most important competencies and then address the control exercised on them in certain cases and as follows. (Adel Tabatabai, 1986, p. 167)

**First Requirement: Competencies of the Caretaker Government :** We had to explain the most important main determinants of the caretaker government as it has become committed to the conduct of daily affairs, even if such a phrase is loose because public affairs are related to everything related to the citizen, many daily issues, even if they are fateful, are related to the citizen, but the totality of what the jurisprudence dealt with in this regard is summarized in its competencies in normal circumstances and its competencies in unusual circumstances.

**Competencies in normal circumstances:**

Actions carried out by the administration, including individual decisions and administrative decisions, all enter into the conduct of the daily matter as they express the state's policy of implementing those decisions in order to achieve public needs, as the administration has always been and is still seeking to satisfy the needs of all society. (Alsayed, 2006, p. 45) Since this is considered necessary in order to achieve the public interest, the intervention of the administration is often through the so-called public utilities, which are undoubtedly committed to development at the local level to facilitate the task of satisfying public needs, and therefore their decisions are considered in terms of legitimacy and in terms of the competent authority is allowed and because

their cessation hinders the satisfaction of public needs , which affects the state. Paralyzed. (Essam Hatem Hussein Saidi, 2021) Therefore, the continuation of the conduct of daily affairs is among the most important needs of the state through its governments, and therefore the government at this stage remains committed to the actual application of the decisions that were taken previously when it enjoyed legal legitimacy or rather constitutional protection because it has full powers, but after its constitutional expiration in the cases that were mentioned earlier, it turns into the conduct of daily life, i.e. the conduct of normal daily business, which is considered as a daily behavior familiar to administrative work or routine that It falls within its competences, i.e. most of them are characterized by administrative work. (Hammadi, 2021) As for the actions that involve prejudice to the constitution, including legislation here, its found that most of the constitutions of the countries of the world have always not allowed these governments to delve into legislative issues because of their political side, they remain within the limits of daily competencies away from legislation in terms of amending or canceling it, and this matter is with regard to all laws, and in return, there are those who believe that resigned governments have the right to submit bills in order to ensure the conduct of daily affairs, including Iraq, in a period From periods, the government of the former Prime Minister (Mustafa Al-Kazemi) submitted a draft food security law, which was approved by Parliament despite the many reservations that hindered the legislative stage of this law, as it guarantees the conduct of daily affairs in the absence of a budget for the country . The government was able to approve this draft before it and was referred to Parliament, which made the latter obligated to approve in order to

conduct daily affairs, and regardless of the confusion that this law called (Emergency Support Law for Food Security and Development) was subjected to, but it was able to remedy the crises that would have led to the collapse of the Iraqi state in light of the political vacuum, according to what some Iraqi politicians described, such a law is one of the urgent issues that Caretaker governments have the right to adopt them for the purpose of conducting daily affairs, otherwise it leads to the disruption of political life, although such a situation is considered contrary to what went to constitutional jurisprudence, but the situation differs from one country to another according to the policy of the state, the general rule is that the state, represented by its government, has the right to conduct daily business that is not likely to be postponed, and it is also obligated to conduct administrative work that is linked to specific legal deadlines, including urgent matters that are intolerable. Delay These governments also remain committed not to justifying the withdrawal of funds by ministries except to the extent necessary, including the payment of salaries of employees. On the other hand, such governments do not have the right to propose bills, conclude agreements, develop future plans for development, contract in order to burden the state with indispensable financial burdens, or appoint special degrees in the state, nor do they have the right to interfere in the borrowing of goods and foodstuffs. (Ali Hadi Hamid Al, 2014) Competencies of the caretaker government in extraordinary circumstances: The countries of the world may go through some extraordinary exceptional circumstances that would affect the political, economic and social conditions, which makes these governments committed to protecting public order in order to achieve the interest of society as a whole,

which makes them take some decisions and competencies that they are not entitled to exercise in normal circumstances, and the purpose behind this is what is required by the nature of the current circumstances in which these countries live in exceptional circumstances. (ALmotaal, 1978, p. 377) Which makes the applied legitimacy different from the legitimacy known in normal circumstances, so the government has the right to dispose of many matters in the application of the requirements of the public interest. That private legitimacy is the one that has been applied other than the normal legitimacy, that is, it has to practice everything required by the exceptional circumstance and required by the state of necessity so that it comes out of the framework of the daily disposition of decisions and takes important decisions without being held accountable by Parliament and finds justification for that by taking Exceptional measures under extraordinary circumstances The principle of necessities allows prohibitions, in addition to the principle of the proper functioning of the public utility and what it requires from the continuation of the work of public utilities, the government has the right in such a case to take decisions that may not take into account the recognized legislative hierarchy in order to limit their aggravation of economic and living conditions in those countries. (Metwally, 1975, p. 78) The best example of this is the decisions of the resigned government during the era of the government of Rashid Karami in Lebanon in 1969, which was the longest throughout history in the Lebanese state, where it took all the ordinary decisions that ordinary governments can take from practicing external and internal business and holding meetings, and the matter lasted for seven consecutive months. (Mohy Religion, 2023)

As for Iraq, its found that government of Mr. (Mustafa Al-Kazemi), the Prime Minister of Iraq, who assumed this position after massive demonstrations in Iraq that led to the resignation of the government of Mr. Adel Abdul Mahdi and the assumption of the post by Mr. Al-Kazemi and the selection of ministers for his government who were supposed to be independent in order to pave the way for amending the election law and preparing for early elections and indeed After several months, his government went through difficult circumstances that necessitated that the government intervene in some decisions, including the so-called law (emergency support for food security and development) in light of the inability of the Iraqi parliament in that period to approve the budget, which made the government in an awkward state in front of the requirements of the Iraqi street, so it sought to pass this law, which is a mini-budget for the management of public utilities, which led to the attempt of some of the politicians to threaten to challenge it before the Federal Supreme Court Following an inquiry submitted by the President of the Republic, Barham Salih, to the Federal Court concerning the powers of the day-to-day conduct of the current Government, the Court replied that "the caretaker Government is the Government transformed from a Government with full powers to a Government with limited powers, by virtue of the resigned Government, which is excluded from the original, which is the exercise of all its powers, and has the authorization to dispose of everything that falls under the requirements of the permanence and continuity of the State" (Federal Court Decision , 2022 ) The Federal Supreme Court confirmed that "the Council of Ministers is considered resigned and continues to conduct daily matters that ensure the adoption

of decisions and procedures that would continue the work of public utilities in the system with the permanence of the constitution, and the continuation of the provision of services to the people," stressing that "this does not fall within the decisions that involve political reasons and motives, which have a significant impact on the political, economic and social future of Iraq, nor does it include proposing draft laws, holding loans or appointing to senior positions of the state and its members. Or the restructuring of ministries and departments, and the court stressed that this decision "has become binding on all authorities." (Interpretive decision, 2022) Second Requirement: Oversight of the Caretaker Government: Like other governments, the caretaker government is among the exceptional governments that have expired, but according to developments and the necessities of public life, they require their existence and continuity until political consensus is achieved and another government is chosen to represent the people, which makes them subject to accountability and oversight by several bodies that undertake the task of ensuring that their actions are compatible with the constitution and not deviating from it and other laws that are joined, because although they aim to achieve the public interest, this does not justify them violating Constitutional and legal texts alike, for this it was necessary to impose control on such governments, which, although numerous, their purpose is to match the work of the Constitution, which is as follows:

**First: Parliamentary Oversight of the Caretaker Government**  
Parliamentary oversight is among the most important principles of separation of powers, where Parliament undertakes the task of legislation, in addition to that, it



performs another task of monitoring the actions and actions of governments, even if they have been considered caretaker governments, which necessitates them to address the most important types of those types practiced by Parliament, which are as follows:

Like the parliamentary question that aims to enable members of parliament to inquire about matters that they do not know, or is it to draw the government's attention to a subject related to the work of state institutions? (Horio, 1974, p. 451)

For Parliament, questions are a valuable source of information to assist it in resolving questions that may be brought to the attention of its members by their constituents, and the question is required to be addressed to the Minister concerned in relation to a matter of his ministry or the tasks entrusted to him, as the question is often of an administrative nature or relates to the details of the Minister's work and within his ministerial competences (Al-Hiyari, 1972, p. 810) The question must also be harmless to the public interest, not contain a violation of the provisions of the Constitution, not contain inappropriate phrases, mention the names of persons or prejudice them in relation to their private affairs, and the subject of the question must not be related to the person who directed it or to a private interest entrusted to him.

The question that arises here is whether questions can be directed to the caretaker government? There is nothing constitutionally preventing members of Parliament from submitting questions to resigned ministers who continue to answer them during the caretaker period, and the matter is equal to that, whether those questions are written or oral. Asking questions is a tool of oversight in the hands of

parliament that can be directed to the government, whether it is a government with full competencies or a caretaker government, but does this method have the same value and effectiveness in both cases? There is no doubt that this means is less valuable and effective if it is directed to the caretaker government, and perhaps the reason for this is the time period that the minister has to answer parliamentary questions and the ability of this period to increase, which allows the minister to whom the question was asked to delay the answer and procrastinate in it, especially if the signs of the formation of the new government are on the horizon. The government has not been able to attend parliamentary sessions, even though it has the legal right to attend and request to speak. In summary, despite the low value of parliamentary questions as a kind of oversight of the ongoing work of the caretaker government, we should recognize that they are one of the important means that enable parliament to monitor the work of the government, especially during government crises. In addition to interpellation, which is also considered a right of a member of parliament to ask the minister for data on the general policy of the state within the scope of the function of his ministry or on any specific issue related to this policy, in this sense, the interpellation represents a right decided for all members of parliaments without restriction, even if it has been submitted by one or more members, although the collectivity of this means of control should not be confused with its submission by one member, once a member of parliament by raising the subject of questioning, it will then become a matter of interest to all members of Parliament and each of them has the right to make a contribution (Salam, 1983, p. 97)

It should be noted that interpellation is a method specific to the parliamentary system and not to other presidential or council systems, since a parliamentary system requires that the Government enjoy the confidence of Parliament in order to perform the tasks entrusted to it, which is not required in a presidential system in which the Government operates independently of Parliament or the Majlis system in which the Government is completely subordinate to Parliament, which eliminates the need for interpellation under these systems (Rabat, 1971, p. 721)

An important issue to highlight is whether parliament can resort to questioning when the government is a caretaker government.

**Second: Judicial oversight of the caretaker government:**

Since the caretaker government is the one that does not enjoy the confidence of Parliament or it is considered by virtue of resignation when dissolving Parliament, so the effectiveness of parliamentary oversight over this type of government is weak or almost non-existent due to the futility of parliamentary oversight or the inability to withdraw confidence due to the dissolution of Parliament, and therefore it was necessary to exercise the second type of control represented by judicial control over the actions and decisions issued by this government, which extends to Research into the validity of the administrative decision in terms of being legitimate or similar to one of the defects that may affect the elements of the decision, which are (jurisdiction, form, reason, object, purpose). The revocations that may be directed to the administrative decision are the defects that affect the previous elements. The origin of the difference and discrepancy between the government with

full powers and the government with restricted powers is that the latter recedes and shrinks its powers within the scope of the conduct of current affairs, and here comes the role of judicial oversight, which undertakes the task of examining the decisions issued by that government to ensure that it does not exceed the scope of its competencies in the conduct of current business, the administrative judiciary always verifies the extent of the government's commitment to the scope of its competencies that it exercises under certain realistic or material conditions, meaning that the judiciary in turn verifies whether The conditions for the exercise of these competences were fully met, since it was therefore not only to ascertain the material existence of the facts, but also to ascertain whether the facts were of a nature justifying the decision taken. (Al-Banna, 1978, p. 65)

When comparing the change that occurs to the government when it is in the field of caretaker business and the pillars of the administrative decision, we find that this change is primarily related to the pillar of jurisdiction, as administrative disputes directed to the caretaker government are often related to the corner of jurisdiction, and here comes the role of the administrative judge in searching for the extent of the government's commitment to the scope of the conduct of ongoing business, and this is confirmed by the Belgian Council of State in a ruling in 1975 when it ruled that the competencies of the resigned ministers It can be exercised only within narrow limits and necessary for the purposes that justify its existence (Adel Tabatabai, 1986, p. 169) The administrative judiciary, with its ability to annul illegal administrative decisions, whether positive or negative administrative decisions, are represented by the Government's refusal to carry out certain

acts and actions required by the Constitution and the law, which exposes them to accountability. (Khamas, 1988, p. 67)

### Conclusion

The caretaker government has always been considered one of the governments and the exception to the general rule because it does not have full competencies and because its existence was in order to satisfy public needs and achieve the general benefit of members of society as a whole in a period in which the state faces a state of political complexity due to the lack of agreement on a government between political parties, especially such a situation occurs in developing countries. Those that are still moving towards democracy under the parliamentary system that tries to achieve consensus between the different political forces in order to achieve political consensus We tried through this research to shed light on this type of government in light of a political period that Iraq lived like other political periods in which consensus is not reached, which makes the expired government the one that runs daily affairs, which made it at stake with regard to decisions Which must be addressed, as well as the control exercised on them in order to ensure respect for the Constitution and the law, the most important results were summarized as follows:

- 1- The caretaker government exists only under a parliamentary system .
- 2- This government is one of the governments whose existence is disputed, but it is a necessity that imposes itself on the ground .
- 3- Iraq went through many stages achieved by that government, including the government of Mr. Mustafa Al-Kazemi, who tried to take over the reins after the

demonstrations and for a period after the elections, which made the government in a state of embarrassment between the requirements of the street and the control and legal situation it is experiencing.

4- The Iraqi constitution has done well when it defines the concept of this government, albeit in absolute terms, but what the Federal Court has done is to determine the role played by this government.

5- The censorship to which this government is subject was and still is considered one of the restrictions that affect its freedom of action, but the purpose behind this is to respect the constitution.

6- Similarity between the countries that adopt the parliamentary democratic system and Iraq with regard to the issue of the caretaker government because it suffers from political instability or the delay of the political process in some circumstances.

As for the recommendations:

1- The need for the constitutional legislator to adopt the term caretaker government in the literal sense of this word instead of conducting daily affairs, which may cause confusion.

2- Allow the caretaker government to be granted the most powers and competencies to face the crises it may go through .

3- The adoption of the constitutional legislator to define this government in the Iraqi constitution instead of resorting to the judiciary in order to understand what it is.

4- Emphasizing constitutional, administrative and political oversight that would curb the intransigence of these interim governments.

## References

- 1- *Translate Book :*  
 Adel Tabatabai. (1986). *Competences of the independent government – A comparative study*. Kuwait: Kuwait Foundation for the Advancement of Sciences.,  
 Al-Banna, M. A. (1978). *Administrative Judiciary*. Cairo: Dar Al-Fikr Al-Arabi.  
 Al-Hassan, H. (1993). *Public Opinion - Media - Public Relations*, . Beirut: Dar Al-Human Rights Publications.  
 Al-Hiyari, A. (1972). *Constitutional Law and the Jordanian Constitutional System, A Comparative Study*. Amman: Ghanem Abdo Press.  
 Ali Hadi Hamid Al, S. ,.-B. (2014, 6 3). Legal Regulation of Exception Systems. *Al-Muhaqiq Al-Hilli Journal of Legal and Political Sciences*, p. 17.  
 ali, S. A. (2007 ). *Basic Principles of Political Systems and Contemporary Systems of Government*. Cairo: Dar Al-Kitab Al-Hadith.  
 ALmotaal, A. A. (1978). *Dissolution of Parliament in Comparative Constitutional Systems*. Cairo: , Dar Al-Nahda Al-Arabiya.  
 Alsayed, A. (2006). *goshawk Public Authorities in the Kuwaiti Constitutional System*. Kuwait : Scientific Publishing Council, Kuwait University.  
 Al-Shehaimi, .. M. (2023, 4 5). *Strategicfile*. Retrieved from The Concept of Caretaker Government, a comprehensive study,: <https://2u.pw/PgLRD0>  
 Constitution. (2005). *Constitution of the Republic of Iraq*.  
 Dana Abd Decent, M. T. (2007). *Dissolution of Parliament and its legal effects on the principle of continuity of state business* . Master Thesis , College of Law, University of Sulaymaniyah.  
 Dana Abd Decent, o. c. (2007). *Dissolution of Parliament and its legal effects on the principle of continuity of state business – A comparative study. Master's thesis*. College of Law - University of Sulaymaniyah.

Essam Hatem Hussein Saidi, ,. V. (2021, 7 6). Caretaker Government in the Iraqi Constitution (A Comparative Study). *Journal of the College of Law for Legal and Political Sciences*, p. 610.

Federal Court Decision , 121 (Federal Court 5 17, 2022 ).

Habeish, F. (2013, 12 10). The concept and powers of the caretaker government. *The Lebanese newspaper Al-Mustaqbal*, p. 21.

Hammadi, K. (2021, 9 1). commendable The constitutional legitimacy of the decisions of the caretaker government under theprovisions of the Constitution of the Republic of Iraq for the year 2005. *Tikrit University Journal of Law*, p. 47.

Hanoun, H. (2016). *immortal Principles of Constitutional Law and the Development of the Political System in Iraq*. Baghdad: Al-Sanhouri Library, ,.

Horio, A. (1974). *Constitutional Law and Political Institutions*. Beirut: Al-Ahlia for Publishing .

Interpretive decision, 121 / 2022 (Federal Court 5 17, 2022).

Khamas, F. A. (1988). *Censorship of the Department's Work*. Mosul: Dar Al-Kutub for Printing and Publishing.

Mesrop, S. B. (2019, 6 21). Caretaker Government and the Limits of Exercising Its Powers. *Al-Rafidain Magazine, University of Mosul*, p. 116.

Metwally, A. H. (1975). *Constitutional Law and Political Systems*. Alexandria: Knowledge Foundation.

Mighty, M. M. (2016). *Caretaker Government in Yemeni and Comparative Law*. Yemen: Queen Arwa University Press.

Rabat, E. (1971). *The Mediator in Constitutional Law*. Beirut: Dar Al-Ilm Li Malayin.

Salam, E. Z. (1983). *Political Control over the Actions of the Executive* . Cairo: Authority in the Parliamentary System.

Saleh, R. K. (2017). *The Judicial Authority in the Federal System* . Cairo: Arab Center for Publisihing and Distribution .