

Eurasian Journal
of Humanities and
Social Sciences



The impact of the parliament dissolution on the executive and legislative authority in Iraq

**Supervisor Dr. Alireza
Tabtabai**

College of Law , University of Religions and Sects
Email : d97r615fv@gmail.com

**Researcher. Mohannad
Qassim Yaqoob**

College of Law , University of Religions and Sects

ABSTRACT

The current research dealt with two pivots, the first is the effect of dissolving Parliament on the legislative authority and the second is the effect on the executive authority. The researcher talked about the nature of the relationship between the dissolution of Parliament and the effect on the executive and legislative authorities through a number of hypotheses. The goal of the researcher is to identify the impact of the dissolution and the consequences of dissolving the two authorities, including taking the entire parliament's authority away, or keeping the parliament with full powers until a new parliament is convened. As well as stripping the powers of the government and making it a caretaker government or a government with full powers until a new government is chosen and its impact on the performance of both authorities. The researcher has adopted the descriptive analytical approach because it is the most appropriate to know the reality of the research aspects. Iraq and Lebanon were chosen for the purpose of highlighting the political system in these two countries. The researcher has reached many results, the most prominent of which is the dissolution of Parliament in Iraq, which makes the government a government that handles daily matters, and the government's survival of managing daily matters is impotent and robbed of its powers. Especially since the legislator did not make an appropriate limit or a specific effect in the event that the government is not formed. The researcher also reached many recommendations, the most important of which is that Article 64 of the Iraqi constitution for the year 2005 must be addressed and the results of the dissolution should be that the government exercises full powers until a new government is formed.

Keywords:

Iraqi constitution, dissolution of parliament, legislative authority, and executive authority.

Introduction

The development taking place in the political systems is witnessing continuous challenges resulting from the application of constitutional and legal texts. As the measure of the impact of each legislation is the extent to which this legislation affects the public order. In order to keep pace with social and political developments, it is necessary to find the best legislative methods that are consistent with achieving these goals. This led to the emergence

of many researches that focused on this field and worked to develop the political and democratic system in the best way. The researcher tried to study the effect of dissolving Parliament on the legislative authority on the one hand, and the effect of dissolution on the executive authority on the other hand.

The first topic - research methodology

First - research problem

The dissolution of Parliament and the consequences of the dissolution represent the most important problems, especially in cases of development in the political, social and legal reality. This prompted the legislator to find the best legislation that is consistent with the nature of each political system. It is necessary to know about the problem of dissolving Parliament and the consequences of that. For the purpose of framing the topic, the researcher put forward a number of questions, as follows:

- 1- What is the effect of dissolving parliament on the executive authority?
- 2- What is the effect of dissolving parliament on the legislative authority?
- 3- What are the main implications of the dissolving ?

Secondly, research objectives

The current research seeks to achieve the following:

- 1- Learn about the dissolution of Parliament.
- 2- Determining the effect of dissolving Parliament on the legislative authority.
- 3- Determining the effect of dissolving parliament on the executive authority.

Third, importance of research

The current research gains its importance from the following:

- 1- Shedding light on the dissolving and the impact of the dissolving on the legislative authority in Iraq.
- 2 Shedding light on the impact of the dissolving on the executive authority in Iraq.

Fourth, research hypotheses

A number of hypotheses have been formulated that represent preliminary guesses that we will diagnose later.

The first hypothesis: There is a relationship between the dissolving and the legislative authority.

The second hypothesis is that there is an effect of dissolving Parliament on the executive authority.

The second topic - the effect of dissolving parliament on the executive and legislative authority in Iraq

The effects of the dissolution on the executive and legislative authority in Iraq

Then we study the effects of the dissolution on the legislative authority in Iraq as well as the executive authority

3-1-1. Effects of the dissolution of the Iraqi parliament on the legislative authority

The effect that is achieved from the dissolution of Parliament on the legislative authority is that the legislative authority ceases to exercise the competence given to it by the constitution. The legislator was keen not to disrupt parliamentary life at any unspecified time. He made the conditions for this dissolution to hold new parliamentary elections after the decision to dissolve.

We find that this has been referred to in many constitutions¹, including the Iraqi constitution, Article 64² of the 2005 Iraqi constitution, referring to holding elections within 60 days after the dissolution of parliament.

Before we discuss the implications of dissolving the parliament in relation to the legislative authority, we must know the constitutional jurisprudential trends from dissolving the legislative authority: -

From the foregoing, we find that there are two trends in determining the impact on the constitutional status of the legislative authority, which are: -

First: The first trend: the traditional constitutional jurisprudence³ originated and grew up in the shadow of the absolute monarchies in Europe. Where he tended to say that the effect of the dissolution is that the effect is as it was not. Thus, the issuance of the dissolution decision means that its members will lose their immunity and they will be ordinary individuals. This rule was applied in the absolute monarchy where the king had the supreme say in the management of state affairs⁴.

The effects of the dissolution for the legislative authority have two tracks in traditional

jurisprudence or modern constitutional jurisprudence, and we will address the first paragraph: -

The first paragraph: theory of civil death

The view of the traditional jurisprudence does not see the dissolution of Parliament, as Parliament loses its powers and authorities, and this is one of the natural results in the era of absolute monarchies. Based on the theory of civil death, where it is used as a legal basis for changing the individual effect of dissolving Parliament. And that this theory goes back to the law.

The general rule in Roman law is that in order for a person to acquire legal personality, three elements must be present: First: he is free, secondly: Roman, and thirdly: he is independent with his rights. If one of these three elements is lost, he loses his legal personality, which may be all or some of them. The loss of personality is far from civil death, *Capiti Sdemiution*⁵. This theory is the dominant historical origin in the traditional thought of applying the civil death system to the dissolved parliament. As the parliament's call for dissolution as well as for a session is one of the manifestations of the royal authority according to the rule that says whoever owns the contract owns the dissolution⁶.

The view of the traditional jurisprudence in applying the theory of civil death does not represent a transgression from the principle of work continuity in the state. There is an opinion that the application of the theory will eliminate the sources of legislation and create a legislative vacuum that affects the continuation of the state. The reality under the absolute monarchies is different because the king is the sovereign. If the decision of dissolution is issued, all legislative powers will be returned, as no legislative vacuum occurs, and thus the dissolution does not affect the continuation of the state's business, even if this leads to the failure of its legitimacy⁷.

In the United Kingdom, this theory was applied in the period between the end of the absolute monarchy and the establishment of the so-called constitutional monarchy. It is still in force

until now, and we find it on the British House of Commons website on the Internet to answer the question: What happens when Parliament dissolves the House of Commons?

ANSWER Every seat in the House of Commons is vacant and all existing business ceases in the House of Representatives and there are no Members of Parliament and they return as ordinary members of the public and lose the ensuing privileges of being a Member of Parliament.

Researcher opinion.

Through the foregoing, we note the decline of this theory because it contradicts the rule of democracy and the principles of separation of powers. Therefore, we note that the jurists strive hard to limit the negative effects of this theory.

The theory of civil death witnessed a wide application in the era of restricted or absolute monarchy, where the king exercised his powers and his supervisory and legislative competencies, so it is not said that there is a legislative vacuum. Although many constitutions have been affected by this theory, there is a large part of the jurists who have gone to make amendments to this theory for many justifications, the most important of which is the incompatibility of this theory with modern democracy. Likewise, the dissolved parliament has ceased to perform its functions and competence, and the head of state cannot fill this void.

The Arab constitutions were affected by the theory of civil death, and this influence was evident in the internal regulation of the Egyptian Parliament issued under Law 380 of 1972 regarding the People's Assembly. The dissolved parliament may not exercise any competencies, and thus this ban includes workers in the parliament's office. Article 37 stipulates that during the dissolution of the People's Assembly, the Shura Council shall assume all the administrative and financial functions entrusted to the Council's office and its president during the dissolution of the Council.

During the dissolution of the Council, the Prime Minister shall assume all the financial and administrative functions that drive the offices of the Council and its Chairman. As well as Article 23 of Law No. 120 of 1980 regarding the Shura Council.

Basically, since the people are the source of authority, the people must choose someone to represent them in the new parliament. One of the attempts of jurisprudence and the constitutional legislator to limit the theory of civil death is to develop some solutions, including the dissolved council meeting, in special cases. Where some constitutions were keen to invite the dissolved Parliament in cases that may require convening and exercising its constitutional competence, including the Italian and English systems.

Second paragraph

The higher councils were not affected by the dissolution of the lower councils

The legislative authority consists of two councils, which is prevalent in most constitutions of countries with a parliamentary system, such as Italy, Iraq and England. The reason behind adopting this system is because of the positives it achieves in terms of representation and job performance⁸.

Third paragraph:

The dissolved council will continue to exercise its constitutional powers.

Given the difficulty of applying the theory of civil death as an effect of dissolving Parliament. There have been many attempts, adopted by some of the jurists of the constitution, to mitigate its impact. As some constitutions saw the impossibility of continuing the application of this theory, to help the continuation of parliamentary life and to get rid of theories calling for the end of Parliament's work, as the new idea is based on constitutional traditions and prevailing custom in order to preserve the legislative institution as the most important institution and is the most representative of the people despite the impact that To change its constitution status is achieved through

dissolution. Among those constitutions is the Austrian Constitution of 1920.

Continuing the work of the standing committees in the dissolved parliament.

The tasks entrusted to the legislative authority require stability and balance between the legislative and executive powers. Hence, we find many constitutions keen to maintain the means of equilibrium between them, because sometimes the dissolution remains unilateral in favor of the executive authority and sometimes results in its departure from the constitutional rules.

In order to achieve the continuity of the work of the legislative authority and in order to achieve balance, the committees must exercise their control over the tasks of the executive authority until the election of a new council⁹. The Austrian constitution is one of the constitutions that adopts the continuation of the permanent committees in performing their constitutional duties, especially in the fields of economy, military affairs and other committees.

A part of jurisprudence has responded to these objections, and they are the prevailing opinion:

1. There is no conflict between the right to a dissolution and democracy because Parliament is not

sovereign, and the dissolution would be a consolidation of the nation's sovereignty if Parliament moved away from its tendencies and desires, exceeded its limits, or failed to perform its duties, which necessitates its dissolution and return to elections whose results may be disappointing to the party that took the decision to dissolve. Moreover, how can the dissolution be considered incompatible with democracy when the people are the source of authority in democratic systems and the government resorts to it in order to ask it when it sees that Parliament has deviated from the will of the voters, so it is considered a manifestation of democracy and a weapon of democracy without controversy if used properly..

2. This right does not contradict the principle of separation of powers, because it leads to ensuring the independence of the executive power in the face of the legislative power, and

this helps to limit the tyranny and extravagance of Parliament.

3. The right of dissolution is not intended to give precedence to one authority over the other, but rather to give precedence to the will of the people. Therefore, it does not strengthen the position of the ministry in front of the parliament, because the ministry finds itself in the same position after the elections, where it will be facing a new parliament that has the final say in all matters of the state.

And after reviewing the foregoing, the effect of dissolving the legislative authority, and what is the effect of the dissolution? Will the dissolved council or the permanent committees continue, or will the authority devolve to the executive authority? This leads us to the most important question in our research.

What are the effects of the dissolution for the legislative authority in Iraq? Through the analysis of the constitutional texts, the following is embodied:

Through the constitutional system in Iraq, we note the Basic Law of 1925. Article 40 stipulates that if the council is dissolved, it must start holding elections again, and the new council is called to convene within a period not exceeding four months from the date of the dissolution¹⁰. The Law of Administration for the State in the Transitional Period of 2004 did not regulate in detail the image of the dissolution to the National Assembly.

It only mentioned two cases of automatic dissolution and did not refer to the theory of civil death, explicitly or implicitly, as the theory of civil death cannot be applied in this constitution. As for the Constitution of the Republic of Iraq for the year 2005, and by analyzing the constitutional texts, we find that it implicitly adopted the theory of civil death in Article 61 / Third: It stipulates that the Council of Representatives withdraw confidence from one of the ministers by an absolute majority. He is considered resigned from the date of the withdrawal of confidence. No confidence may be raised in a minister except upon his will or upon a request signed by two members following an interpellation discussion addressed to him. The Council shall not issue its

decision on the request until at least seven days after the date of its submission. The President of the Republic may submit a request to the House of Representatives to withdraw confidence from the Prime Minister. The Council of Representatives may, at the request of one-fifth (1/5) of its members, withdraw confidence from the Prime Minister, and this request may not be submitted except after an interrogation directed to the Prime Minister, and after at least seven days of submitting the request.

A. The Council of Representatives withdraws confidence from the Prime Minister by an absolute majority of its members.

B. The ministry is considered resigned in case of withdrawal of confidence from the Prime Minister.

C. In the event of a vote of no confidence in the entire Council of Ministers, the Prime Minister shall continue in their positions to manage daily affairs for a period not exceeding thirty days until a new Council of Ministers is formed in accordance with the provisions of Article 67 of the Constitution¹¹.

D. On the other hand, the constitution does not contain any explicit text that allows the council to convene after dissolution to exercise some of its powers. Also, we did not find any explicit text, either in the Law of Administration for the State for the Transitional Period or the Iraqi constitution of 2005 allowing permanent parliamentary committees to continue At work after the dissolution decision.

As for the work of the Council, the Iraqi legislator has violated the right thing to organize the work of the Federation Council and did not regulate the work of the Council and its jurisdiction in the Constitution, but entrusted the task to the Council of Representatives. Therefore, the Federation Council is a body that has not been constitutionally regulated, nor is it regulated by the law of Article 48. The federal legislative authority is from the Council of Representatives and the Federation Council¹².

3-1-2. Effects of dissolving the Iraqi parliament on the executive authority

After we know the effects of the dissolution for the legislative authority, we will look for the effects of the dissolution for the executive

authority. The origin of the parliamentary system is a presentation of the work carried out by the executive authority on Parliament, where it exercises the task of oversight and legislation¹³.

The government has means to monitor parliament, and the most powerful of them is the dissolution. Thus, the parliamentary system is built on the basis of mutual oversight between the legislative and executive authorities. Therefore, the jurists of the administrative judiciary are at a point of disagreement in determining the powers of the executive authority during the period of dissolution of Parliament. This was in two directions: the first, the full jurisdiction of the government during the dissolution period, and the direction for the second specific powers, which represent the daily business of a caretaker government¹⁴.

We will clarify and display the three directions:

-

1. The first principle: the full jurisdiction of the government during the dissolution period.
2. The second principle: the competence of the government to conduct daily business.
3. The third principle is the provisional government system.

The first paragraph: the principle of the full jurisdiction of the government during the dissolution period.

As part of the constitutional jurisprudence has tended to say that the government has full powers during the period of dissolution of Parliament¹⁵. Where some constitutions went to give the executive authority full powers during the dissolution period. Constitutional traditions took place in most countries that used to take dual executive power over members of the government with full powers during the dissolution period, whether they withdrew confidence from them or enjoyed the confidence of Parliament, including the British Constitution, the German Constitution of 1949 and the Swedish Constitution¹⁶.

Article 69, third paragraph of the German Federal Constitution of 1949 states that, at the request of the President of the Republic, the Chancellor must perform tasks at the request of

the Chancellor or the President of the Republic, and any Federal Minister must continue to carry out his duties until a replacement is found¹⁷.

Some jurists of constitutional law believe that the right of dissolution is a weapon used by the government to guard against the parliament's powers that threaten the government. It cannot be said that when the parliament is dissolved, it will go with equality over the government, by giving it specific powers that do not go beyond the daily running of business.

Supporters of this view assert that the weapon of the dissolution is in the hands of the government in order to put it in a strong position before Parliament and end the meeting of the new parliament¹⁸.

The second paragraph: the principle of competence of the current caretaker government and the conduct of business

Part of the jurisprudence sees that the government that provides advice or proposes to dissolve parliament, it is logical¹⁹ to have specific powers to be a caretaker government for the duration of the parliament's dissolution, as it means that the government exercises specific competencies.

This opinion was based on a number of grounds, including²⁰:

1. The right of dissolution is used as a difference between the executive authority and the legislative authority. It may be between Parliament and the government, or the head of state and the government.
2. The government from which the dispute arose is a dissolution that has the decision to dissolve, and it must be completely impartial until the results of the elections are issued.
3. Some state constitutions indicate that the government from which confidence has been withdrawn or whose resignation has been submitted, must exercise specific powers - a caretaker government - until confidence is granted to a new government²¹.

The Interim Government System: Some constitutions ensure that an interim government takes over the rule of the country during the period of dissolution of Parliament. This is in order to avoid problems and disputes

due to the criticism that the government was subjected to if it dissolved Parliament and was in control of the matter in the country. This system appeared in Britain. And that the system in Britain takes the full jurisdiction of the government, and it has practiced this principle with great precision, making it from time to time resort to forming an interim government²².

Among the Arab constitutions that adopted this principle is the Constitution of Syria of 1950. Article 85 stipulates that the President of the Republic may dissolve the Council of Representatives by a justified decree of the Council of Ministers. However, the House of Representatives may not be dissolved before the lapse of eighteen months from its election. In the event of the dissolution of the Council, the ministry resigns, and the President of the Republic appoints a government without its use to supervise the elections. This text emphasized that the role of the transitional government is to supervise the elections. In order to ensure its impartiality, it was stipulated that it be from a person other than the government with whose knowledge the parliament was dissolved.

There is another opinion besides the traditional and modern opinion, which includes:

If the constitutional system applies the theory of civil death to the dissolved parliament, the government will be a caretaker government. But if the constitutional system applies a modern theory, then Parliament continues to exercise jurisdiction during the dissolution period and may exercise it through a permanent or temporary committee, then there is no objection to the exercise of full powers.

Here, the researcher believes that most of the ways to dissolve parliaments are the result of disputes, so that civil death means the withdrawal of confidence and the government being a caretaker government, especially in countries with modern democratic experiences. As for the second trend, it needs depth in the practice of democracy.

As for Iraq, which is the focus of our discussion of this demand, and after knowing and analyzing all cases of the effects of the dissolution on the executive authority, such as supporters of a caretaker government or a

government with full jurisdiction or that it is an interim government. By analyzing the special texts, whether in the Law of State Administration for the Transitional Period or the Iraqi Constitution of 2005, we will know what is the direction of the Iraqi legislator.

The State Administration Law did not address the constitutional status of the legislature after the dissolution of the National Assembly. It was a clear reference in the text of Article 64 of the Iraqi constitution, which states that the President of the Republic, when dissolving the House of Representatives, calls for new elections within sixty days from the date of the dissolution. The Council of Ministers is considered resigned and handles business - and daily matters - and here the legislator has taken to determine the government's competence to handle current affairs during the dissolution period²³.

In a situation like the situation in Iraq, the researcher believes that broader powers must be given to the government, as well as the continuation of the work of some parliamentary committees, as they follow the dissolution of parliament for long periods of time to convene parliament and form the new government. Therefore, we must follow the modern principle, and this was either followed by the decision to dissolve parliament and call for elections for the length of the session and formation period²⁴.

The third topic: conclusions and recommendations

First: conclusions

- 1- The dissolution of Parliament has a significant impact on the disruption of the executive authority in Iraq.
- 2- The dissolution of Parliament results in the end of the parliamentary session, and there is no parliamentary life until a new parliament is elected.
- 3- The dissolution of Parliament shall take place from the moment of voting, which was drawn up

by the permanent Iraqi constitution for the year 2005.

4- The government shifts to managing daily affairs only.

Second: recommendations

1- It is necessary to amend Article 64-Second, which makes the government a caretaker government, replacing the text with a new text,

¹ The Permanent Iraqi Constitution of 2005 (Article 64-).

² . The two constitutions that violated the general rule were the Swedish constitution of 1974 and the Portuguese constitution of 1976.

³ . Jafari, "Parliament's Self-dissolution in Some Constitutional Systems": p. 76.

⁴ . Abdul-Mutaal, Dissolution of Parliament in Constitutional Systems: p. 87.

⁵ Talib, History of Legal and Social Systems, Part One, Formation and Development of Legal Laws: p. 203.

⁶ G.berila , La dsolution , et le reginedes ponuvoirs:, ,P133.

⁷ I.G.MoRA. NG.A.C.4: P 630.

⁸ Muslim, The Right to Dissolution in the Parliamentary System: p. 13.

⁹ Article (29-paragraph-1) of the Austrian Constitution of 1920 included the formation of permanent committees consisting of members of Parliament to approve the decrees issued by the government during the period of dissolution. Kuwait University, Year 15, 1994, p. 23.

¹⁰ The Iraqi Basic Law of 1926, Article 40.

¹¹ The Iraqi Constitution (Article 61).

¹² Article (65) of the Constitution refers to the establishment of a legislative council called the Council of the Union, comprising two representatives of the regions and governorates that are not joined to a region, and its composition, conditions, punishment, jurisdiction and everything related to it are joined by law from a two-thirds majority of the members of the House of Representatives.

¹³ Al-Shabani, The Right to Dissolve Parliament in Contemporary Constitutional Systems: pg. 4.

and keeping the government fully empowered until a new government is selected.

2- Imposing an appropriate penalty in the event that the government is not formed after the election of the government that came after the dissolution of Parliament.

References

¹⁴ Haytayi, the specialization of the resigned government - a comparative study: p. 35.

¹⁵ Al-Sharif, The Right to Dissolve Parliament in Contemporary Constitutional Systems: pg. 406.

¹⁶ Article (15) of chapter to sixth of the Swedish constitution in force stipulates that (if the parliament declares that the prime minister or another minister no longer enjoys confidence, they must resign if extraordinary parliamentary elections procedures are not resorted to. As for Article (8) it stipulates that The continuation of the resigned government in taking over the affairs of government until the formation of the new government.

¹⁷ Article (68) of the Basic Law of the Federal Republic of Germany states that if a chancellor submits a request of confidence and this request does not obtain the approval of the majority of the members of the Federal Parliament, the President of the Republic can then, based on the Chancellor's proposal, dissolve the Federal House of Representatives within a period of twenty-one days while it becomes Parliament shall be null and void as soon as the Federal Parliament has elected a new advisor to the country.

¹⁸ Al-Sayyid, The Role of the Head of State in the Parliamentary System: p. 375.

¹⁹ There are many definitions of a caretaker government, as it has been defined as (the authority available to ensure the continuity of national life from the date of the resignation of the government and the date of the formation of the new government). It was also known that it operates according to a certain range of competencies enjoyed by the wisdom that puts the end of the government by its own will, or that it no longer enjoys the confidence of

Parliament. And the French constitutional lexicon defines it: as the system that, in terms of conditions, applies to all resigned governments, because those governments do not have the full power.

²⁰ VEPL. Le Mond 3 decmber , 1995 , EBLMONT , Art m Gtt , P : 105.

²¹ See the opinions (for example: the text of Article (96) of the Constitution of Syria of 1950 that when the ministry resigns or the confidence is withdrawn, then the ministry proceeds in the conduct of business until the formation of a new ministry... Also, Article (75)

of the Mauritanian constitution of the year 1991, provided that the resigned government continues to carry out the current work until a new prime minister is appointed or the president of the republic appoints a first minister and government.

²² Abdel-Motal, Dissolution of Parliament in Constitutional Systems, Comparative Study: pg. 341.

²³ Article 64 of the Iraqi constitution for the year 2005.

²⁴ The decision to dissolve the Iraqi parliament on 7-10-2021.