



# The Implications of Parliamentary Interrogation in the Iraqi Constitution of 2005 (Comparative Study)

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**Abstract:** This study examines the implications of parliamentary interrogation in the 2005 Iraqi Constitution, focusing on its constitutional and political effects. The research aims to analyze whether parliamentary interrogation serves as an effective oversight mechanism and how it impacts government accountability, particularly regarding political responsibility and confidence withdrawal. The study employs an analytical method, utilizing constitutional texts from Iraq, Jordan, and Kuwait, combined with a comparative approach to evaluate differences in parliamentary oversight mechanisms. The findings reveal that parliamentary interrogation plays a crucial role in maintaining a balance between legislative and executive powers. However, the study identifies weaknesses in the existing procedures, suggesting the need for constitutional reforms to enhance parliamentary effectiveness.

**Keywords:** Parliamentary Interrogation, Political Responsibility, Iraqi Constitution, Government Accountability, Comparative Constitutional Law

## Introduction

Parliamentary interrogation is one of the most important means of the House of Representatives' oversight of the government or one of its members or those in their position. This means of oversight has a number of effects, the most important of which is political responsibility and the consequences that result from that, the most important of which is the resignation of the person to whom the parliamentary interrogation is directed. In other cases, this political responsibility may result in the dissolution of Parliament, but the submission of this resignation does not take place except in the case of following a series of procedures that are followed by the House of Representatives to reach those results.

## Importance of Research

The importance of the research comes from the importance of its topic (the effects of parliamentary interrogation in the Iraqi Constitution of 2005) as it deals with the most important constitutional effect resulting from parliamentary interrogation, which is political responsibility and what results from it in terms of the resignation of whoever is proven responsible for the actions he takes, through which this responsibility can be raised before

the House of Representatives, in addition to the fact that it is the means by which a balance can be achieved between the legislative and executive authorities.

### **Research Problem**

The subject of the effects of parliamentary interrogation raises questions worthy of research, including the following:

1. What is the effect of the interrogation?
2. What is the concept of that effect, its characteristics and then its types?
3. How did this effect develop in Iraq and the stages it went through?
4. What are the results that result from it?

### **Research Objectives**

This research aims to attempt to understand the issues related to the effects resulting from parliamentary interrogation and whether these effects are suitable to be a special means of oversight like other means of oversight that the House of Representatives possesses towards the government or one of its members and those in their position, as well as to show the shortcomings that marred the articles that dealt with these effects by our legislator in order to avoid them in the future.

### **Methodology**

God willing, we will rely on the analytical approach in addressing the points raised, by relying on the texts of the Iraqi Constitution of 2005, as well as the internal regulations of the Iraqi Council of Representatives of 2007, as well as analyzing the internal constitutional and legal texts of the comparative countries (Jordan and Kuwait). That is, we will rely on another approach, which is the comparative approach.

### **Research Plan**

The research was divided into two sections according to the following order:

- The first section: Political responsibility as a direct and constitutional effect of the parliamentary interrogation.
- The second section: Procedures for withdrawing confidence from the person to whom the parliamentary interrogation was directed.
- Conclusion: Conclusions and recommendations.

### **Result and Discussion**

#### **Political Responsibility as A Direct And Constitutional Effect of Parliamentary Interrogation**

Political responsibility is the cornerstone of the balance of power and influence between the two poles of the parliamentary system, which are the executive and legislative authorities (1). The latter has the right to dismiss the government or one of its members, the minister, when it is unable to carry out its duties or deviates from achieving its goals or commits errors in its pursuit of these goals. In return, the executive authority has a weapon parallel to the right of dismissal, which is the right to dissolve parliament and end its life before the end of its natural term (2). Accordingly, we will divide this topic into three

demands. We will devote the first to the concept of political responsibility. As for the second demand, we will devote it to studying the stages of its emergence in England and its development in Iraq. As for the third, we will devote it to studying the withdrawal of confidence from the person to whom the parliamentary interrogation was directed, as follows:

### **The first requirement: the concept of political responsibility**

To clarify the concept of political responsibility that falls on the person to whom the parliamentary interrogation is directed, it must be defined and its characteristics explained, and then its types explained. Accordingly, we will divide this requirement into two branches: In the first branch, we will discuss the definition of political responsibility, and in the second, we will discuss the characteristics and types of this responsibility, as follows:

#### **Section One: Definition of Political Responsibility**

Political responsibility has been defined by many and varied jurists of constitutional law. Some of them defined it as: the right of parliament to withdraw confidence from the entire ministry as a unit or from one of the ministers, and this parliamentary action entails the resignation of the ministry or the minister as a result of withdrawing confidence from it (3). Some of them defined it as: the right of parliament to withdraw confidence from one of the ministers or the body of ministers as a whole, whenever the action issued by the minister or the government requires accountability (4). Some defined it as: the right that entitles parliament to withdraw confidence from the body of the ministry as a whole, or from one of the ministers, whenever the action issued by the minister or the government requires accountability, and this parliamentary action entails the resignation of the ministry or the minister as a result of withdrawing confidence from it (5). Some of them defined it as: the right of parliament to withdraw confidence from one of the ministers or from the entire ministry if the action issued by him or her requires accountability and results in his or her resignation (6). Some of them defined it as: the right of parliament based on a specific majority determined by the constitution to withdraw confidence from the government as a result of a serious shortcoming or a grave error in (7) Implementing its program or in implementing the general policy of the state, and some of them defined it as: a form of ministerial responsibility that falls on the entire ministry or one of the ministers when the parliament does not approve of the policy followed by the ministry or adopted by the minister, which only results in a political penalty, which is resignation (8). Political responsibility is considered one of the distinguishing features of the parliamentary system, as some jurists (9) saw that this responsibility is the sufficient feature to consider this system or that a parliamentary or non-parliamentary system. If one of the constitutions stipulates the political responsibility of the ministry, this text is sufficient to describe this system as parliamentary. We see that it is noticeable from what we have presented from the previous definitions that we find that all those who dealt with the definition of political responsibility from the jurists of constitutional law have agreed that it is (a right established for parliament and that its parties are parliament and the government or one of its members, and it can only result in a political penalty represented by resignation).

## **Section Two: Characteristics and Types of Political Responsibility**

Political responsibility is characterized by several characteristics that make it self-contained, and it also has types. Accordingly, we will divide this section into two objectives: In the first, we will discuss the characteristics of this political responsibility, while in the second, we will discuss the types of this responsibility, as follows:

### **The First Objective: Characteristics of Political Responsibility**

Political responsibility has characteristics that distinguish it from other responsibilities such as criminal, civil and administrative responsibility. Accordingly, we will review all of these characteristics as follows:

#### **1. Responsibility does not entail a political error.**

In order to achieve civil liability, three pillars must be present: error, damage, and causal relationship. However, in the liability we are dealing with (political), these pillars are not necessary to achieve it. It is not always necessary for an error to occur on the part of the person to whom the parliamentary interrogation is directed (the Prime Minister, one of the ministers). It is also not necessary for there to be damage, and of course it is not conceivable that there is a causal relationship between them (10). If the error committed by the Prime Minister or one of the ministers raises political liability, this is not the only way to reach this result. Political liability may be achieved simply by the existence of a political disagreement in political viewpoints or a difference in political directions and visions between the Council of Ministers and Parliament, which prompts the latter to initiate political liability against the Council of Ministers to force it to retract those visions and directions. If the Council of Ministers insists on them, it is subject to the withdrawal of confidence from it (11).

#### **2. Political responsibility includes monitoring legitimacy and appropriateness.**

Parliament has the right to exercise both types of oversight over the government whenever it is proven that an action contrary to legitimacy and appropriateness has been taken by the ministry or minister, the result of which would necessarily be the invocation of political responsibility (12). Parliament's oversight extends to include even the personal actions of ministers whenever these actions are harmful to the public interest or violate the minister's job obligations (13).

#### **3. Political responsibility is not a personal responsibility.**

The decisions and procedures taken by ministries are subject to political responsibility and can be based on it. As is well known, administrative work is governed by a hierarchical hierarchy, and this hierarchy is governed by the system of the president's responsibility for the actions of his subordinates. Therefore, the minister is responsible for what is issued by his employees and managers. Whenever these actions include a breach of the principle of legitimacy or appropriateness, the minister's responsibility is then realized, and he cannot push this responsibility away on the pretext that this employee acted contrary to the directives and instructions or deviated in using the powers permitted to him (14).

#### **4. Political responsibility cannot be raised later.**

This feature is related to the previous feature in that political responsibility is not a personal responsibility, but rather an objective one related to a ministerial function and not related to a specific person, but rather its subject is political and is represented by the actions issued by the ministry. With this statement, we find that political responsibility is characterized by the characteristic of not being able to raise it later. What is meant by “later” is that when the functional relationship of the minister or prime minister ends or that capacity is no longer there for any reason, the political responsibility of the ministry or minister cannot be raised in the event that its legal term has ended or they have previously submitted their resignation. In these cases, members of the ministry or government cannot be prosecuted, due to the lack of the capacity of the person to whom the interrogation was submitted (15). There are some jurists who say: (The reason for the impossibility of raising political responsibility later is that the essence of political responsibility is often represented by the political dispute between the government and parliament, which is not possible unless the government is in power) (16). We see that the penalty imposed on political responsibility is the dismissal of the person upon whom it was imposed, and this cannot be achieved if the government is originally outside the scope of authority in the state.

#### **The Second Objective: Types of Political Responsibility**

Political responsibility takes many forms. It may be individual, and this responsibility is borne by the responsible minister alone. It may be joint responsibility, and the government bears it together, either because of its support for the responsible minister and solidarity with him, or because the council does not agree with the general policy of the government, which leads to determining its responsibility represented by the Prime Minister (17). Accordingly, political responsibility takes two forms, which are joint (joint) responsibility and individual (personal) responsibility. Accordingly, we will discuss these two forms as follows:

##### **1. Individual Responsibility**

This type of responsibility relates to each minister individually or to the responsibility of specific ministers, meaning that a specific action is attributed to a specific minister or to a number of specific ministers such that the entire ministry cannot be considered responsible for it. This usually only happens in cases where the minister acts independently. If the prime minister does not stand in solidarity with the minister or ministers responsible, and if parliament does not consider that the action attributed to the minister affects the policy of the ministry, then the minister must submit his resignation – as a result of the withdrawal of confidence from him – without this affecting the rest of the members of the ministry, while the ministry remains in place (18).

The parliamentary system grants the minister broad powers in managing the affairs related to his ministry and does not make the Council of Ministers a presidential authority above the minister. It is natural that the minister alone bears the errors attributed to him personally, in accordance with the rule of linking authority and responsibility (19). This is because the minister is the highest administrative head of the ministry, and has broad



powers in managing the affairs of this ministry and takes administrative decisions in accordance with these powers that are not subject to the approval of the ministerial body, and these decisions are less important than decisions related to the general policy of the government, and therefore the government does not care about them as a collective body. For example, the minister has the power to conclude contracts related to the affairs of the ministry, and these decisions are often individual decisions (not organizational) and these decisions can have serious effects because they may be tainted by the abuse of power, and therefore the movement of responsibility for these actions does not produce its effect except in the face of this minister, so if confidence is withdrawn from this minister, he must resign (20). The Jordanian constitution came to decide unambiguously about individual responsibility, as it made the minister responsible before the House of Representatives for any action of his ministry (21), and this responsibility is not limited to what the ministry or minister does in terms of positive actions, but extends to negative actions, i.e. cases of failure to perform the work, as he is held accountable in the event of negligence and dereliction. The Kuwaiti legislator has adopted the individual responsibility that falls on the minister in terms of his being responsible before the National Assembly for the work of his ministry, and the meaning that the work of the ministry is directed towards is not limited to the administrative bodies directly subordinate to the minister, but rather extends to include the independent public bodies and institutions that are subject to his supervision and direction. Therefore, it cannot be said after that: There are public institutions or bodies, no matter how much independence they enjoy from the central authority, whose work is outside the scope of political responsibility (22). The Iraqi Constitution of 2005 has adopted the individual responsibility in Article (83) of it, where it states that (the responsibility of .... and ministers before the House of Representatives ... is personal).

## **2. Joint liability**

It is the responsibility of all members of the Council of Ministers whenever the act that creates the responsibility is related to the general policy of the Council of Ministers. This responsibility is based on the principle of ministerial solidarity, and this assumes the solidarity of all members of the Council of Ministers in bearing the responsibility for what is related to the general policy of the ministry and the resulting possibility of the collective resignation of the Council of Ministers. Resignation in joint responsibility assumes the resignation of all ministers without exception (23). None of them can exempt himself from resignation on the pretext that he is opposed to the policy of the ministry. The principle of ministerial solidarity imposes several obligations on ministers, which are as follows (24):

### **A. Defending the general policy of the ministry or resigning.**

The principle of ministerial solidarity results in a positive commitment on the part of all ministers to defend, support and back the general policy, and a negative commitment not to criticize this policy. Every minister is considered part of this policy and an implementer of it. If a minister finds himself opposing the policy of the ministry, he must resign. If he does not submit his resignation, he is considered responsible for the policy of

the ministry, as he is a partner in determining its policy. The two matters cannot be the same: opposition and continuity in the ministry (25).

#### **B. The obligation to vote.**

According to the principle of ministerial solidarity, ministers are obligated to vote on Cabinet decisions, whether to accept or reject them. Ministerial solidarity requires every minister to participate in the work of the Cabinet, and failure to participate in the vote is considered a breach of this obligation. Joint responsibility is based on the fact that the ministry is a single political bloc that issues its decisions according to the principle of majority. If one of the ministers votes to reject and the collective decision of the Cabinet is to approve, then the members of the Cabinet must support this decision, even those who voted to reject (26).

#### **C. Refrain from all actions that cause embarrassment to the Ministry.**

This commitment represents the negative side of the minister's commitment to support the general policy of the Council of Ministers, which is represented by refraining from any action or statement that would cause embarrassment to the ministry and taking into account that his actions are consistent and in agreement with the ministry's directions and general policy. As is known, every minister has the right to issue decisions regarding the management of the affairs of his ministry without referring to the Council of Ministers to obtain its approval. However, the minister must take into account in these decisions their consistency with the policy of the Council of Ministers, and that these decisions do not lead to the production of a new policy that is different from or in opposition to the general policy (27).

#### **D. The confidentiality rule of the Ministry's work.**

The content of this rule is summarized in not disclosing any information or data related to the ministry's policy or the discussions that take place within it. We find the basis of this rule in the oath that the minister swears upon assuming the ministry to maintain the confidentiality of the ministry's work (28). Since the procedures and deliberations of the Council of Ministers are confidential, the ministers are obligated not to divulge them except with explicit permission in order to preserve the rule of ministerial solidarity. In the event of a leak of information and official secrets, the mere leak is sufficient to dismiss the minister regardless of whether harm occurs to the state or not (29).

The Jordanian Constitution of 1952 included the joint responsibility of the Prime Minister and the Minister for the general policy of the State before the House of Representatives. This principle was stipulated by the Jordanian Constitution of 1952, which obliges each Minister to the obligations we mentioned previously regarding matters imposed by ministerial solidarity (30). Joint responsibility was not known in Kuwait, through which confidence is withdrawn from the Prime Minister, but rather the principle of the impossibility of cooperation with the Prime Minister was established. However, if the National Assembly sees, in the manner stipulated in the 1962 Constitution, that it is not possible to cooperate with the Prime Minister, the matter is referred to the Emir, who has the right to dismiss the Prime Minister and appoint a new ministry or dissolve the National

Assembly. In the event of dissolution, if the new council decides by the same majority that it is not possible to cooperate with the Prime Minister, he shall be considered to have resigned from his position from the date of the council's decision in this regard and the formation of a new ministry (31). The Iraqi Constitution of 2005 defined this type of responsibility in the aforementioned Article (78), which states that (the Prime Minister is the direct executive responsible for the general policy of the state...). Through the previous text, we see that our constitutional legislator has ruled on the possibility of joint responsibility for the Prime Minister before the Council of Representatives. The internal regulations of the Iraqi Council of Representatives of 2007 have clarified the procedures related to this responsibility, despite the fact that these procedures contain clear defects in several places.

### **The second requirement: The stages of the emergence of political responsibility in England and its development in Iraq**

The political ministerial responsibility did not appear in England suddenly, but rather previous stages paved the way for its appearance. This responsibility appeared for the first time with the appearance of the Iraqi Basic Law of 1925 AD, but it disappeared in the constitutions that followed it. However, it reappeared after that in the Iraqi constitutions. Accordingly, we will divide this requirement into two branches. In the first, we will discuss the stages that this responsibility went through, while in the second branch we will discuss the development of this responsibility in our country, Iraq, as follows:

#### **The first section: The stages that political responsibility went through in England**

As we mentioned before, political responsibility did not appear in one go, but was reached after a long, solid development. It is known that the emergence of this system was in England before other countries, and then it was transferred to other countries that adopted this system. Accordingly, the stages that this responsibility went through are as follows:

##### **First: The criminal accusation stage (Impeachment)**

The criminal accusation emerged in the fourteenth century as a tool for monitoring the king's aides. This can be explained by the fact that the king in England was completely free to choose his ministers and Parliament had no authority over them (32). However, since the king was not responsible, responsibility was transferred to his ministers. One of the prevailing principles during the era of absolute monarchy in Britain was the principle of the king's irresponsibility (33). Because authority was not exercised by him, but rather by his ministers, it was prevalent at that time that the aura of royal sanctity extended to include the king's aides, or as they are called (ministers). Parliament also had no right to change them or impose them on the king. This is on the one hand. On the other hand, the principle of the king's irresponsibility does not mean that his aides are not responsible, whether civilly or criminally, in the event that they commit something that causes this responsibility to arise (34). Because of the judges' weakness in holding ministers accountable, especially with regard to their performance of their duties, the need arose to create a special court and special procedures for trying ministers. Here the idea of criminal accusation emerged. Thus,



the English felt that these ordinary judges They may not find within themselves the courage to judge these ministers, so the role was assigned to the House of Commons as a representative of the British provinces, where it plays the role of the jury, while the authority to try was assigned to the House of Lords (35). The emergence of the criminal accusation was not based on a legal basis, but rather was done by inciting the Lords of Deputies to use it. After the repeated use of the accusation, they relied in their justification on the general rules of law, so they returned the authority of the accusation, which is within the jurisdiction of the House of Representatives, to the laws of the kingdom (36). The idea of the criminal accusation remained the only means of raising the responsibility of ministers before Parliament until the seventeenth century, despite the defects of this means, the most important of which are the following (37):

- a) The difficulty and complexity of the procedures required to implement it.
- b) Deviating from its objectives in many cases and using it as a means of denunciation and abuse.
- c) This method can only be resorted to in the event that the minister commits an act that violates the Penal Code. As for other acts, they were outside the jurisdiction of the criminal accusation, especially political acts.

There are some jurists who say: (Despite the amendments made by the English Parliament to the criminal accusation during the seventeenth century, such as not being permitted to dissolve Parliament or postpone its session during the period of the criminal accusation, and preventing ministers from being included in the amnesty during the accusation, these amendments were not sufficient to make the criminal accusation a sufficient means to achieve parliamentary oversight of the actions of the executive authority. The first accusation in the history of England was voted during the era of the Good Parliament known as (the good parliament) in 1376 AD, when Lord (Latmer), the king's advisor, was accused of hostility to the idea of religious reform that aimed to increase the independence of the church, and he was sentenced to dismissal and a fine) (38).

### **The second stage: the overlap of political responsibility with criminal responsibility**

The first stage of political responsibility, which is the stage of criminal accusation, continued until the seventeenth century, after it was the only means of questioning ministers until the era of the Stuart family, when responsibility took on a new form, which is (political criminal responsibility), as the House of Commons began to use accusation not only in purely criminal matters, but also in cases where ministers committed serious errors or carried out an act that was not in the interest of the country, even if this act was not considered a criminal offense, such as when one of the ministers suggested to the king to conclude a treaty that would harm the interest of the country (39). Accordingly, criminal responsibility took on a political character, and this was through:

- a) Cancelling the King's right to stop the prosecutions conducted by Parliament against the accused minister, in addition to cancelling his right to resort to not calling Parliament or dissolving it (40).
- b) Recognizing the House of Lords' authority to classify the crime and determine its punishment (41).

- c) Cancelling the King's right to grant pardon to prevent the use of the criminal accusation method against the defendant (42).

### **The third stage: the stage of political responsibility**

At the beginning of the eighteenth century, Parliament began to soften the severity of the accusation and move it away from its criminal nature, and thus the intensity of political conflicts subsided. This appeared when it began to use criminal accusation in order to remove ministers from their positions, so the punishment became limited to dismissal without stripping the minister of his wealth or honor, and this is the essence of political responsibility (43). The criminal trial before the English Parliament was like any trial before ordinary courts that leads to a ruling with a punishment that affects the convicted person, his freedom, or his money. It is sufficient for Parliament to threaten the minister with a criminal trial if he does not submit his resignation in order to force him to resign to escape punishment (44). A rule also appeared that gave ministers the right to submit their resignation in the event that Parliament accused them (45). Thus, the accusation became political instead of criminal. The beginning of this transformation was when a dispute broke out between the Prime Minister and the House of Commons in 1741 AD. As a result, the King invited the leader of the opposition (Pulteny) to form the ministry to succeed (Robert Pole) who resigned. This action laid the first application of the rule of entitlement. The opposition in forming the ministry upon the resignation of the parliamentary majority government (46). With the resignation of (Robert Ball), individual political responsibility appeared, and the House of Commons attacked the Prime Minister (Torth) in 1782 AD, which led to his resignation and the resignation of the entire ministry, and thus ministerial solidarity appeared (47), and thus it can be said: the emergence of political responsibility in its two types, individual and joint, and it replaced criminal responsibility or political criminal responsibility with its complex procedures, and Parliament became able to bring down the minister or ministry by withdrawing confidence from them, and Parliament began to decide to dismiss ministers in the event that they committed errors instead of waiting for a crime to be committed by them.

### **Section Two: The Development of Political Responsibility in Iraq**

With the installation of King Faisal bin Al Hussein as King of Iraq, the first constitution of Iraq was issued during that period, which was the Basic Law of 1925 AD. This constitution established a political system of the parliamentary type. In this system, the idea of political responsibility of the government was adopted in its two types, individual and joint, as members of parliament could monitor the work of the government and direct questions and clarifications to it. The House of Representatives, by a majority of its present members, could withdraw confidence from the entire government or from one of its members. Then the government had to submit its resignation or the minister had to resign (48). (However, it is noticeable that this constitution stipulated the possibility of political responsibility being imposed on the person to whom the interrogation was directed, but the text was only formal, as the political reality was not in line with the constitutional reality. What was happening in Iraq was a backward economic, social and political reality) (49). The

Iraqi people reached the conviction that the monarchy could not be developed or reformed, but it must be changed. Then came the revolution of July 14, 1958, and the constitution (27) of July of that year was issued. However, it is noticeable that this constitution did not A clear political system in which the people govern themselves, or is it possible to pave the way for the establishment of such a system? Therefore, it was neither expected nor possible for any new governmental responsibility to arise under this constitution. Then came the 1963 Constitution, which was called (Law of the National Council for the Leadership of the Revolution) No. 25 issued in 1963. This constitution also did not appear in it nor mention the political responsibility of the government when it was negligent in its work or duties. After that, the Constitution of April 22, 1964 was issued, which followed the same constitutional approach as its predecessor, as it excluded the subject of the political responsibility of the government, as this constitution addressed ministerial responsibility, but ruled on the possibility of criminal responsibility, which is one of the forms of ministerial responsibility. This constitution only addressed criminal responsibility when it stated in Article (75) that (the President of the Republic and the Council of Ministers, with the approval of the President of the Republic, may refer a minister to trial for crimes committed by him in the performance of his duties). With the issuance of the Constitution of September 21, 1968, it was decided that ministers were responsible before the President of the Republic in performing their duties and actions (50). This means that this Constitution approved the individual responsibility of the government. After the issuance of the Interim Constitution of 1970, the state institutions were not completed until 1980, when the National Council was established at that time. The duties of the National Council were determined by this Constitution, and among these duties is the possibility of directing questions and interrogations to members of the government. The internal regulations of the National Council have clarified all matters related to this, although the role of the Council does not go beyond merely submitting a recommendation to the President of the Republic in order to issue the appropriate decision regarding those proven to be negligent. (51) The Iraqi Transitional Administrative Law of 2004 stipulated political responsibility as a result of the interrogation in the event that the accusations directed at members of the government were proven true, and thus confidence in the government was withdrawn. Thus, this law stipulated the individual and collective political responsibility of the Prime Minister and ministers for any mistakes they made while carrying out their official duties (51). As for the current Iraqi Constitution of 2005, it stipulated the political responsibility of the Prime Minister and the minister, and even the heads of independent bodies, as a result of the interrogation in its Article (83). It is worth noting that (despite the ability available to the House of Representatives to establish political responsibility, it is noted that this constitution has prohibited tampering with the House of Representatives without the latter's approval, and this is what Article (64/1) of it went to) (52).

### **Section Two: Withdrawing confidence from the person to whom it was directed**

Upon completion of the discussion of the interpellation, several proposals are issued, and the withdrawal of confidence is one of the proposals issued by the members of Parliament. This proposal is one of the most dangerous proposals submitted, and its danger

is highlighted in that it requires the members of the House of Representatives to vote to withdraw confidence from the person to whom it was directed. The withdrawal of confidence is among the effects that result from the establishment of political responsibility (53). (It is possible to say that political responsibility is the principle and the procedures for implementing this principle can be translated into withdrawing confidence from the government. Accordingly, if the interpellation is an accusation directed by Parliament to the government or the minister, then the request to withdraw confidence is tantamount to a request for conviction) (54). It is noted that the withdrawal of confidence requires certain procedures, and these procedures differ from one country to another, in addition to the fact that the withdrawal of confidence results in certain effects, and this is what we will discuss in this section. Accordingly, we will divide this section into two requirements. We will devote the first to studying the procedures related to withdrawing confidence from the person to whom it was directed. As for the second, we will discuss the effects that result from withdrawing confidence, as follows:

#### **First requirement: Procedures for withdrawing confidence**

In order to withdraw confidence from the person to whom the parliamentary interrogation is directed, there must be procedures that must be passed through in order to reach the effects of withdrawing confidence. These procedures are not the same in all countries, but rather they differ from one country to another according to the systems in place. Some political systems may require simple procedures for withdrawing confidence from the person to whom it is directed, and other systems may require special procedures for withdrawing confidence, such as submitting a request for confidence from a certain number of members of parliament or having a special majority when voting on withdrawing confidence or having a specific deadline to consider the issue of withdrawing confidence. The council may not make its decision before this deadline. Accordingly, we will divide this requirement into two branches. In the first branch, we will discuss the simple procedures for withdrawing confidence, while in the second, we will devote it to studying the complex procedures for withdrawing confidence, as follows:

#### **Section One: Simple Procedures for Withdrawing Confidence**

By simple procedures we mean not requiring a period of time between submitting a motion of no confidence and voting on it, nor requiring a special majority for the issuance of that decision related to withdrawing confidence from the person to whom the parliamentary interrogation was directed. Rather, confidence can be withdrawn by a majority of the members present in the legislative council. A clear example of this is the procedures for withdrawing confidence in England, as those procedures related to withdrawing confidence in it are similar to amending the law, as an absolute majority of those present is sufficient. Usually, the motion of no confidence is moved by the leader of the opposition, as he is given sufficient time to discuss it if the matter is related to government policy, as its discussion may take a full day or more (55). These procedures were also known in France under the Third Republic, as there were no special procedures or a specific majority to be able to move the responsibility. It was sufficient for the motion

of no confidence to be put forward and approved by a majority of those present in the council, and thus the government falls (56). We can sense the manifestations of these procedures when withdrawing confidence from the person to whom the parliamentary interrogation was directed in Lebanon. The amended Lebanese Constitution of 1926 made the right to request a withdrawal of confidence absolute for every representative in ordinary and exceptional sessions. Article (37) thereof stipulated that “the right to request a vote of no confidence is absolute for every representative in ordinary and exceptional sessions...” (57). This constitution did not stipulate a special majority to withdraw confidence from the ministry or the minister, but rather left the determination of this majority to the general rule in voting on draft laws according to Article (34) thereof, which stipulates that “the meeting of the Council shall not be legal unless the majority of the members who compose it are present, and decisions shall be taken by a majority of votes. If the votes are equal, the draft submitted for discussion shall be dropped.” (Accordingly, an absolute majority of those present is sufficient for the decision to withdraw confidence to be issued. Thus, the overthrow of the ministry or the minister in Lebanon is done by a decision issued by more than a quarter of the members who make up the parliament, i.e. a quarter + 1, as it is sufficient for half of the number of those present + 1 to withhold confidence in order for the ministry to fall) (58). (However, what is taken from following the simple procedures to withdraw confidence from the government is that it is a wrong and dangerous method at the same time, as it contradicts logic and the spirit of the correct parliamentary system, which stipulates that the ministry does not give up its seats unless it loses the support of the majority of the members of parliament, and the majority of those present does not express the true will of the council) (59). We agree with what this opinion stated regarding the necessity of not adopting these procedures in order to withdraw confidence from the person to whom the interrogation was directed; because withdrawing confidence is one of the dangerous matters that may lead to striking the person to whom the interrogation was directed at the core of his political work, for the exercise of which he obtained the majority of the members of parliament. Accordingly, it is unreasonable to use simple procedures in withdrawing confidence, which must be surrounded by special procedures so that the decision to withdraw confidence is of a high degree of soundness by not rushing to withdraw that confidence.

## **Section Two: Complex Procedures for Withdrawing Confidence**

There are countries that follow procedures that can be said to be special procedures for withdrawing confidence from the person to whom the parliamentary interrogation is directed. These procedures differ from the procedures that were previously discussed, as these countries require complex procedures for withdrawing this confidence, and these procedures can be identified as follows:

### **1. A certain quorum must be achieved to withdraw confidence.**

In order to withdraw confidence based on a parliamentary interpellation, this request must be submitted by a group of parliamentary members, and this is according to what the constitutions in those countries stipulate. Countries differ from one another in terms of the



number of members who have the right to submit the request. In Jordan, what the Jordanian Constitution of 1952 stipulated was brief on this subject, and the internal regulations of the Jordanian House of Representatives of 1996 did not refer to anything related to this subject except what was stipulated in Article (124/w) of these internal regulations, which states (If the interrogator is not convinced by the minister's response, he may state the reasons for his lack of conviction, and he and other representatives may raise confidence in the ministry or the minister, taking into account the provisions of Article (54) of the Constitution) (60). The Jordanian Constitution of 1952 stipulated that the number of members signing the request to withdraw confidence should not be less than (10) members of the House of Representatives. Therefore, the initiative to raise confidence is a right for the representatives and the government together (61). As for Kuwait, the Kuwaiti Constitution of 1962 stipulated that the submitted request should be Signed by a number of members, not less than (10) members, and the internal regulations of the Kuwaiti National Assembly also stipulated that this request be submitted by a number of members, not less than (10) members (62). This procedure represents an obstacle that has always stood in the way of submitting a request to withdraw confidence from ministers, no matter how serious its violations are. Accordingly, the request to withdraw confidence is considered unacceptable if it is proven that its submitters agreed to it before the interrogation was considered. This is what used to happen in practice among the members of the Kuwaiti National Assembly, as the request to withdraw confidence was prepared in advance and signed by its submitters among themselves, before the interrogation session was held or during it (63). In Iraq, our constitutional legislator has stipulated that the request to withdraw confidence be signed by (50) members of the House of Representatives in the event of withdrawing confidence from the minister. As for the Prime Minister, the request must be submitted by one-fifth of the members of the House of Representatives, and this is what the Iraqi Constitution of 2005 stipulated, as well as the internal regulations of the Iraqi House of Representatives of 2007 (64). One of the things that astonishes us is that our legislator no longer considers the difference to be significant between the members who signed the request to withdraw confidence from the minister or someone who is in the position of (heads of independent bodies) and the members who signed the request to withdraw confidence from the Prime Minister. It would have been more appropriate for our legislator not to equate the two numbers and to make the difference between them greater to show the importance of withdrawing confidence from the Prime Minister over the case of withdrawing confidence from the minister or someone who is in the position of him. This is a condition that this request be submitted to the Speaker of the House of Representatives, and as we said previously, it must be signed by a number of members. After that, the Speaker of the House presents the request to withdraw confidence in the same session in which it is presented (and it is necessary for the Speaker of the House of Representatives to verify the presence of the request submitters in the session, as the exit of some of them from the session or their absence from it at the time of presenting the proposal is considered a waiver of the request to withdraw confidence). In application of this, what happened in the session of questioning the Kuwaiti Minister of Health (Mohammed Ahmed Jarallah) submitted by the

representative (Hussein Al-Ghalaf) on the subject of fighting national competencies and violating human rights and ignoring and not answering questions as well as favoritism, profiteering and waste, in this session the request to withdraw confidence in the minister was not presented due to the absence of the submitters of the request to withdraw confidence from the representative (65). There are some jurists who believe (that the presence of the members who submitted the request in the session is an indication of the seriousness of the members in their request, and in this session the House sets another session in which the vote on confidence will be held) (66). (This and the reason for the necessity of achieving this quorum when submitting the request to withdraw confidence is in order to ensure the seriousness of the members who submitted it and thus the presence of The majority of the people's representatives are dissatisfied with the government's policy (67).

## **2. A specific deadline for the vote of confidence**

The constitutions of most countries stipulate a period of time between submitting a motion of no confidence and issuing a decision to do so (withdraw confidence). This period, as they say, is sufficient to calm people down, so that the parliament's decision to withdraw confidence from the person to whom the questioning is directed does not come as a result of a whim or emotional outburst. Parliament then votes from its members in an atmosphere of calm thinking, untainted by incidental emotions (68). Given the serious effects of withdrawing confidence, both on the person to whom the questioning is directed and on the relationship between the legislative authorities represented by parliament and the executive in general (69), this period of time has been stipulated by the constitutions of countries that adopt special procedures for withdrawing confidence, which may vary in length or shortness according to what those constitutions stipulate (70). If we review the position of the comparative countries, we see that the Kuwaiti legislator has set this period as (7) days from the date of submitting the request to withdraw confidence (71), and this period was not set by the constitutional legislator in Jordan, except that the Jordanian constitution has authorized the competent minister or the government to request a postponement of the vote of confidence for one time for a period not exceeding (10) days, and the dissolution of the House of Representatives is prohibited during this period, i.e. before the decision is issued on the subject of confidence in the ministry or one of its members (72). As for our constitutional legislator, it has ruled that the council may not issue its decision on the request to withdraw confidence before at least (7) days have passed from the date of submitting this request, whether it concerns the prime minister or one of the ministers or someone who is in their position, and this is what was confirmed by the constitution of 2005, as well as the internal regulations of the Iraqi Council of Representatives of 2007 (73). In application of this matter, we mention what happened in the session to withdraw confidence in the Mayor of Baghdad when the Speaker of the House of Representatives indicated that the vote on the vote of confidence in the Mayor of Baghdad would be one week after this date, i.e. the period of (7) days begins from the date of submitting the request to withdraw confidence to the House of Representatives (74).

### 3. A special majority to approve the request to withdraw confidence

Most constitutions have stipulated the need for a special majority in order to approve the decision to withdraw confidence from the person to whom the parliamentary interrogation was directed, and this majority is the absolute majority, i.e. more than half of the members of the council (75). Here, the majority of the number of members present is not suitable for withdrawing confidence, but rather a special majority must be available, represented by the absolute majority of the members of parliament, which is what those constitutions that adopt the special procedures for withdrawing confidence have agreed upon. This was stipulated by the Jordanian legislator in Article (53/Paragraph 2) of the Jordanian Constitution of 1952 AD, saying (If the Council - the House of Representatives - decides to have no confidence in the ministry by an absolute majority of the total number of its members...) (76). The Kuwaiti legislator decided that it is possible to withdraw confidence from the person to whom the parliamentary interpellation was directed in the event that the council approves by a special majority, which is the majority of its members. This is what the Kuwaiti Constitution of 1962 stipulated in its Article (126) which states: (...and the withdrawal of confidence shall be by a majority of the members of the council...). This means that what is required is not the approval of the majority of the members present at the session (77). Ministers are exempted from this so that they do not stand in solidarity with the minister or support him in order for the council's decision to be purely parliamentary (78). As for the Iraqi legislator, given the seriousness of the decision to raise confidence in the person to whom it was directed, it stipulated the necessity of obtaining an absolute majority of the number of members of the House of Representatives, i.e. the necessity of obtaining a special majority for this, as the Iraqi Constitution of 2005 stipulated in its Article (61/Eighth/A) that (the House of Representatives may withdraw confidence from a minister by an absolute majority of its members...). This is what was stipulated and confirmed by the internal regulations of the Iraqi House of Representatives of 2007 (79). (80) This majority is the same as what the Iraqi legislator stipulated in order to withdraw confidence from the Prime Minister. Some jurists believe that "this percentage is logical despite the previous guarantees, because it is the percentage that granted confidence to the government" (81). This means that the one who granted confidence is the one who withdraws it, and in the same proportion. It can be said that this majority is the majority of the members who make up the parliament, not the majority of those present. Thus, the members who are absent or abstain from voting on the decision to withdraw confidence are considered to be on the side of the government in reality, as if they had objected to the decision to withdraw confidence from the one to whom it was directed (82).

#### The second requirement: the consequences of withdrawing confidence

The withdrawal of confidence from the person to whom the parliamentary interpellation is directed has two effects: either the government or the minister concerned submits its resignation, which is the most common case, or the government resorts to dissolving parliament. This is what we will discuss in two sections. In the first, we will discuss the resignation of the government or the minister, while in the second, we will

discuss the dissolution by considering it an effect that can result from the withdrawal of confidence, as follows:

### **Section One: Submitting Resignation**

Submitting a resignation is one of the inevitable consequences of withdrawing confidence. This resignation may be submitted by the Prime Minister, which results in the resignation of the entire ministry in the case of joint liability, or the resignation may be submitted by one of the members of the government or by a specific number of ministers against whom a decision to withdraw confidence was issued in the case of individual liability (83). This raises the question of when is someone from whom confidence has been withdrawn considered to have resigned? We say that the answer to this question requires reviewing the position of the constitutions of comparative countries on this subject. In Jordan, the ministry or minister is considered resigned from the date of the decision of no confidence in them (84), but the Jordanian Constitution of 1952 AD and the internal regulations of the Jordanian House of Representatives of 1996 AD have been deficient in specifying the period in which the Prime Minister must submit his resignation to the King, although the only precedent in this field appears to be that the Prime Minister (Mr. Samir Al-Rifai) on (2) April 1963 AD submitted the resignation of his government on the evening of the day on which the House of Representatives voted to withdraw confidence from his government. There was also no text addressing the date of accepting the resignation, which leaves the door open for the King to decide on the resignation of the ministry, which continues to manage the affairs of the state as required by constitutional norms (85). As for the situation in Kuwait, the answer to this question was mentioned in Articles (101, 102) of the Kuwaiti Constitution of 1962 AD, as Article (101) stipulated that the minister is considered resigned from the date of The Council's decision of no confidence in him, and not from the date of approval to accept the resignation, no matter how late that date, and any action issued by the Minister after that is considered absolutely null and void, and he submits his resignation immediately after that, and this ruling is logical and consistent with the principle of commitment to the decision issued to withdraw confidence. In the case of the Prime Minister, the situation is different, as Article (102) of the Kuwaiti Constitution of 1962 AD addressed all matters related to the Prime Minister, stipulating that if cooperation with the Prime Minister is not possible, the matter shall be referred to the Head of State, and in this case the Emir may keep the Prime Minister and appoint a new ministry or dissolve the National Assembly. In the event of dissolution, if the new Assembly decides by the same majority not to cooperate with the aforementioned Prime Minister, he shall be considered to have resigned from his position from the date of the Assembly's decision in this regard and a new ministry shall be formed (86). In the session of questioning the Deputy Prime Minister and Minister of Foreign Affairs of Kuwait, Sheikh Dr. Muhammad Sabah Salem Al-Sabah, submitted by MP Saleh Ashour, the government resigned only one day after the date of submitting the question. The subject of the questioning was related to the issue of negligence and neglect of the prestige of the state, as well as the minister's inability to maintain the unity of society and defend the unity of its national fabric and failure to repel attempts to harm the Kuwaiti people. As a result, the government submitted its resignation

and thus became a caretaker government (87). The position of our Iraqi legislator in the 2005 Constitution stipulated that if a decision is issued by the House of Representatives to withdraw confidence from the person to whom the interrogation was directed, he must resign from his position immediately after the decision of no confidence is issued, with the obligation to submit his resignation immediately (88). This is in the case of withdrawing confidence from the minister (individual responsibility). This is what happened when the vote was taken to withdraw confidence from the head of the Integrity Commission, Mr. Radhi Al-Radhi, where the council voted to withdraw confidence from him due to its lack of conviction in the answer he submitted (89). However, in the case of withdrawing confidence from the Prime Minister, the ministry is considered resigned (90).

## Section Two: Dissolving Parliament

As we mentioned earlier, the withdrawal of confidence results in the resignation of the person to whom the parliamentary interpellation was directed, but the government or one of its members or someone in their position may not submit the resignation, but rather a request may be submitted to the head of state that includes the dissolution of parliament (91). This request is submitted when the person to whom the interpellation was directed sees that he is right and that the majority in parliament is stubborn, so it asks the head of state to dissolve parliament and make the people the judge in the dispute or disagreement that arises between the government and parliament (92). The right to dissolve means: the executive authority ending the term of the parliament before the natural end of the legislative session (93), (and this right that the executive authority has over the legislative authority is the right corresponding to the initiation of political responsibility, as it is truly a tool of balance between the government and parliament) (94). Just as the ministry is responsible before parliament, and the latter has the right to withdraw confidence from the government and bring it down, the ministry has the right, in return, to dissolve parliament and then hold new elections with the intention of resorting to the people in the dispute that arises between it and parliament (95). This right always makes the representatives hesitate to raise political responsibility. (96) The Jordanian legislator adopted the principle of dissolving the House of Representatives, and this is what we find stipulated in the folds of the Jordanian Constitution of 1952 in the text of Article (34), which states that (3- The King may dissolve the House of Representatives). The Jordanian legislator has also placed a number of restrictions on exercising this right, as he stipulated that the royal will issued to dissolve the House of Representatives must be signed by the Prime Minister and the Minister of Interior, otherwise the dissolution is considered as if it had not taken place (97). Likewise, the House is not dissolved when the vote of confidence is postponed (98). The legislator also restricted the right to dissolve by prohibiting the dissolution of the new House for the same reason for which the previous House was dissolved, in addition to the necessity of holding elections after the dissolution, otherwise the dissolved House will resume exercising its constitutional powers (99). The Kuwaiti legislator has ruled on the possibility of dissolving the National Assembly, which the government uses against the parliament. The Kuwaiti Constitution of 1962 has recognized the right of dissolution and set provisions for it. If the National Assembly sees that it is not possible to cooperate with



the Prime Minister, the matter is referred to the Head of State (the Emir), and the Emir has one of two options: either to dismiss the Prime Minister and appoint a new ministry, or to dissolve the National Assembly. In the event of dissolution, if the new Assembly decides by the same majority that it is not possible to cooperate with the Prime Minister, he is considered to have resigned from his position from the date of the Assembly's decision in this regard (100). If we go towards our Iraqi constitutional legislator, we find that it has stipulated the possibility of dissolving the House of Representatives, and this is what is stipulated in Article (64/First, Second) of the Iraqi Constitution of 2005, which states that (First: The House of Representatives shall be dissolved by an absolute majority of its members, based on a request from one-third of its members, or a request from the Prime Minister and with the approval of the President of the Republic. The Council may not be dissolved during the period of questioning the Prime Minister. Second: The President of the Republic shall call for When the House of Representatives is dissolved, general elections shall be held in the country within a maximum period of (60) days from the date of dissolution. In this case, the Council of Ministers shall be deemed to have resigned and shall continue to manage daily affairs.

## Conclusion

1. Parliamentary interrogation has several effects, the most important of which is political responsibility and its consequences, which are represented by resignation or sometimes the dissolution of parliament by the government in order to achieve a balance between the two authorities.
2. We have reached an important point that we may disagree with constitutional law scholars, which is that responsibility is not one of the means of oversight, but rather an effect that results from parliamentary interrogation. Through it, confidence is withdrawn from the person to whom the interrogation is directed and then he is dismissed.
3. Our Iraqi legislator exaggerated, whether in our Iraqi Constitution of 2005 or its internal regulations of 2007, by mentioning guarantees in order to withdraw confidence from those who are proven guilty of charges brought by one or more members of the Council of Representatives.
4. We have reached the conclusion that our Iraqi legislator referred in our Iraqi Constitution of 2005 to the effects that result from interrogation in Article (83) thereof.
5. We have concluded that there is a series of procedures, whether they are special procedures to withdraw confidence from the person to whom the parliamentary interrogation is directed or simple procedures to withdraw confidence, which means that there is no time period between submitting the request to withdraw confidence and voting on it.
6. We have concluded that one of the results of withdrawing confidence is the dismissal of the person to whom the interrogation is directed, and not as most constitutional law scholars say that the result of political responsibility is resignation.

**Recommendations:**

1. We recommend our constitutional legislator to reformulate the text of Article (61/Eighth/A) of the Iraqi Constitution of 2005 by replacing the word (resigned) with the word (dismissed).
2. We recommend our constitutional legislator to amend the text of Article (83) of the Constitution to read as follows (The responsibility of the Prime Minister and the Ministers before the Council of Representatives shall be joint and individual).
3. We recommend our constitutional legislator to make a big difference between those who signed the request to withdraw confidence from the Minister or his equivalent and those who signed the request to withdraw confidence from the Prime Minister because there is a big difference between the two positions.
4. We recommend our Iraqi legislator to make the vote to withdraw confidence a secret vote and not a public one, as secrecy is consistent with the guarantees of the freedom of the representative in making the decision on the one hand and not embarrassing the representative in front of his voters or the government on the other hand.

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