

The Prime Minister's direct responsibility for the general policy of the state in the Constitution of the Republic of Iraq for the year 2005

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Abstract

Political responsibility is considered a characteristic that distinguishes it from other responsibilities because these characteristics result from the nature of the action issued by the president, in addition to the legal rules from which the action comes. Therefore, acknowledging the direct responsibility of the Prime Minister alone, without the ministry, for the general policy of the state comes in violation of the general laws of responsibility. The direct responsibility of the Prime Minister in the Constitution of the Republic of Iraq for the year 2005 raises a fundamental problem because the laws for determining responsibility resulting from general policy violated the constitution when it decided that the Prime Minister alone is subject to the direct executive responsibility of the state, which was referred to in Article (78) of the Constitution because the Prime Minister cannot alone determine the policy of the state. Therefore, it is necessary to examine the right laws for determining the responsibility of the Prime Minister to achieve a balanced political system capable of achieving prosperity and recovery of the state's economy.

Keywords: Prime Minister, direct responsibility, general policy, Constitution

Introduction

The principle of full direct responsibility falls on every minister who becomes a member of the ministry after the issuance of a resolution; accordingly, the direct responsibility before the council is based on such a situation. This is also one of the basic principles on which parliamentary responsibility is built ⁽¹⁾.

Therefore, acknowledging the direct responsibility of the Prime Minister for the general policy of the state away from the whole ministry is a violation of the general rules of responsibility.

Research Problem

The direct responsibility of the Prime Minister in the Constitution of the Republic of Iraq for the year 2005 raises a fundamental problem. Since the Prime Minister neither has the right to decide on the state's policy or the bills implementing it according to his/her personal opinion, nor does he/she make any decision on any matter related to formulating

the policy on his/her own interest. Rather, all of this has been granted to the jurisdiction of the Council of Ministers. Sound legal logic dictates that the Council bears full joint responsibility for any error in public policy according to the rule that responsibility is proportionate to authority, and responsibility exists where authority exists.

However, the rules for determining responsibility arising from public policy in the Constitution of the Republic of Iraq for the year 2005 came in violation to that when it decided that the Prime Minister alone is subject to the direct general executive responsibility of the state in Article (78) of the Constitution, which stated, “the Prime Minister is the direct executive responsible for the general policy of the state, and the Commander-in-Chief of the Armed Forces, manages the Council of Ministers and chairs its meetings, and has the right to dismiss ministers, with the approval of the Council of Representatives.”

Significance of the research

Sound laws represent the responsibility of the Prime Minister in achieving a balanced and sound political system, capable of achieving prosperity and recovery of the state's economy, and the well-being of the standard of living of its people.

Scope of research

The accurate results of the research require explaining the Constitutional laws of the Republic of Iraq for the year 2005 regarding determining the direct responsibility of the Prime Minister and comparing them with the systems close to it. At the forefront of those countries is Britain according to the provisions of its legal system and Japan based on the rules of its effective Constitution for the year 1946, in addition to the countries supporting the study represented by Germany according to the laws of the German Basic Law for the year 1949 amended in 2012 and Turkey according to the provisions of its Constitution for the year 1982 amended in 2011.

Research plan

The study addresses this topic in two sections. The first section defines the direct responsibility of the Prime Minister in the 2005 Constitution, while the second identifies the special nature of the direct political responsibility of the Prime Minister in the 2005 Constitution.

(1) Dr. Sayed Sabry, The Ministry's Government, The International Press, Cairo, 1953, p. 180.

Section One

Definition of the direct responsibility of the Prime Minister in the 2005 Constitution

The constitutional documents came with some important legal means so that the constituent authority ensures that the governing bodies are subject to constitutional laws to guarantee, to a large extent, that they do not exceed the tasks assigned to them by the constitution.

At the forefront of these means is the Prime Minister's responsibility before the Parliament for the conduct of the state's general policy. Thus, the Parliament ensures that the PM's actions are examined and he/she is held accountable, if necessary, given that ministerial responsibility is one of the basic foundations on which the parliamentary system is based.

To clarify the direct responsibility of the Prime Minister, we will divide this topic into two sections. The first section will explain the nature of the direct responsibility of the Prime Minister in the 2005 Constitution, and the second section will explain the nature of the direct political responsibility of the Prime Minister in the 2005 Constitution.

1. The nature of the direct responsibility of the Prime Minister in the 2005 Constitution

Responsibility as a legal concept has specific limitations and scope that differs from other concepts. In order for the meaning of responsibility in the legal framework to be clear, responsibility must be defined in language and in legal terminology as follows:

First: The linguistic definition of the direct responsibility of the Prime Minister:

Responsibility in language means what a person's obligation towards his/her actions. However, it is noted that the meaning of the word responsibility undoubtedly extends beyond directing a question, demand, or inquiry, and includes the meaning of threat and intimidation as in the Almighty's saying "And stop them; indeed, they are to be questioned,"⁽²⁾ and the saying of the Prophet (PBUH) "All of you are guardians and are responsible (for your wards)"⁽³⁾.

Responsibility is derived from 'responsible' and 'questioning,' but not every question leads to the meaning of responsibility. There is a question of inquiry to know a specific piece of news or knowledge, such as the Almighty's saying: "They ask you (O Muhammad SAW) about the new moons. Say: These are signs to mark fixed periods of time for mankind and for the pilgrimage."⁽⁴⁾

(2) Surah As-Saffat, verse 24.

(3) Narrated by Al-Bukhari, Muhammad bin Ismail Al-Bukhari Al-Ja'fi (d. 256 AH), Sahih Al-Bukhari, Part Two, p. 848, Hadith No. (2278).

(4) Surah Al-Baqarah, verse 189.

There is the question of supplication issued from peer to peer, and there is the question whose meaning is directed towards supplication, which is issued from the lowest to the highest (O God, we ask You for forgiveness), and what concerns us only is the question whose meaning is directed towards responsibility, accountability, and questioning and falls under its perspective, like the Almighty's saying "Surely, We will question them all; about what they used to do."⁽⁵⁾

From all the above indications and definitions, we conclude that responsibility means questioning a person about a matter for which he/she is responsible, and he/she is asked to answer when asked and bears the consequences of that obligation if he/she neglects or falls short. Also, it is necessary to provide evidence when answering. The responsible person in the state is the one charged with an action for which he/she is responsible, so it is accountability for the results to which he/she has committed. It must be said that responsibility is given according to the meaning it falls, so it is given (morally) to the person's commitment to what he/she does or says, and it is given (legally) to the commitment to correct the error that occurred to others according to the law. Thus, the responsible person is a statesperson who is entrusted with an action for which he/she is responsible.⁽⁶⁾

As for directness, it is derived from the verb direct and means immediately, directly without an intermediary. A person directly did the matter means that he/she did it himself/herself without an intermediary.⁽⁷⁾

The president: the head of everything, and the plural in the few is heads and Aras on the heart and heads in the many, and they did not accept this, heads: the last on the deletion and his head he heads him head: he hit his head, and he was headed head: he complained about his head, and I headed him, so he is subordinate and a leader if you hit his head (8).

As for the meaning of ministers, the burden, Abu Ishaq said: The burden in the speech of the Arabs is the mountain to which one takes refuge. This is its origin, and everything to which you take refuge and fortify yourself is a burden. Among the metaphors: the minister of a man is a burden, if he promised he promises, and a burden is a burden, like he knew he knew, and a burden is a burden in the passive form, a burden and a burden, with the kasra and the fatha, a burden like a number, and what is authentic from Al-Zajjaj: a burden, with the kasra of the waw as you saw it punctuated and perfected like this in Al-Lisan, and the meaning of the whole is: he sinned, so he is a burden, because it is for the duality (9).

(5) Surah Al-Hijr, verses 92-93.

(6) Al-Mu'jam Al-Wajeez, Arabic Language Academy in Cairo, special edition by the Ministry of Education, 1992, p. 229.

(7) Ibn Manzur, Lisan Al-Arab, Part Four, p. 61.

(8) Ibn Manzur, Lisan al-Arab, Part Five, p. 79.

(9) Ibn Manzur, the same source, p. 285.

Second - The technical definition of the direct responsibility of the Prime Minister.

The opinions of public law jurisprudence differed in defining political responsibility and went in two directions. The first trend is the broad meaning of the direct responsibility of the Prime Minister. Some have said that it is the right that gives parliament the right to impeach the Prime Minister and the ministers whenever the action done by the minister or the government requires accountability.⁽¹⁰⁾ However, what is criticized about it is that it did not refer to the effects that result from political responsibility, which is the necessity of the government's resignation, and it did not specify the means of its activation and its legal basis.

This was confirmed by another jurisprudence saying that responsibility is the accountability of the person who exercises an act of the executive authority, such as the head of state, the prime minister, the ministers, and their deputies, or whoever participates in setting the general policy of the state. It is raised in the event of a person's breach of constitutional obligations, political failure, or the commission of serious errors that could expose the interests of the country to danger, and he/she is held accountable before a specific body.⁽¹¹⁾

Another jurisprudence defined responsibility as the authority to investigate the facts about the actions of the executive authority to reveal the lack of proper implementation of the general laws in the state and to hold the person responsible for that accountable, whether it is the entire government or one of the ministers.⁽¹²⁾

Some agree with that, noting that the responsibility of ministers before Parliament is for all their actions and behaviors, positive and negative, legitimate and illegitimate, intentional and unintentional. Parliament monitors the general policy of the government and examines the soundness of the various ministerial procedures and decisions, not only in terms of their conformity with the laws, but also in terms of their suitability to the actual circumstances in which they were issued and the extent of their compatibility with the public interest and the extent of their achievement of the desire of the parliamentary majority, even if that desire conflicts with the law.⁽¹³⁾

(10) Dr. Saad al-Sayyid Ali, Political Responsibility in the Balance (A Comparative Study), Dar Abu al-Majd for Printing, Cairo, 2008, p. 9.

((11 Dr. Muhammad Fawzi Abdul Latif Nuwajji, The Responsibility of the Head of State in Islamic Thought and Positive Law, Dar Al-Jamiah for Publishing, 2005, p. 32.

(12) Dr. Ihab Zaki, Political Oversight of the Actions of the Executive Authority in the Parliamentary System, Alam Al-Kutub, Cairo, 1983, p. 3.

(13) Dr. Tharwat Badawi, Political Systems (General Theory of Political Systems), Dar Al-Nahda Al-Arabiya, Cairo, 1964, p. 290.

The second trend is the narrow meaning of the direct responsibility of the Prime Minister. One of the jurists says that it is the responsibility that is established before the parliament or before the people according to the provisions of the constitutional law. It is also a responsibility that is established not for the actions by which members of the government violate a legal text, but rather for the actions that cannot be classified according to the texts of the law as mistakes or crimes. What is meant is those actions that arise from the public policy and shown to be inconsistent with the interests of the state. ⁽¹⁴⁾

This was confirmed by another jurisprudence, which stated that the resignation of the entire ministry is required as long as the action that necessitated responsibility was connected to the general policy of the ministry or was attributed to the prime minister because he/she is the symbol of this general policy and the director of the ministry's actions, or was issued by a minister and the ministry was in solidarity with him/her. ⁽¹⁵⁾

Political responsibility is generally considered the most important form of responsibility to which ministers are exposed as members of the ministry, which represents one of the public authorities in the state. It is determined with regard to all the actions they undertake, whether political or administrative. Political responsibility has a broader scope than criminal and civil responsibility, as it is not limited to a wrongful act from a civil or criminal perspective only, but rather extends to cover all actions and behaviors that do not meet the approval of the authority responsible for determining political responsibility. However, what distinguishes political responsibility is that it falls only on members of the executive authority - in the constitutional sense - as a general law; the political responsibility of ministers exists within the scope of the relationship between the ministry and the parliament. ⁽¹⁶⁾

The nature of the direct political responsibility of the Prime Minister in the 2005 Constitution

Political responsibility has characteristics that distinguish it from other responsibilities, and these characteristics result from the nature of the act committed by the ministry as well as the type of laws that the act violates as well as the party with jurisdiction over the issue of this act.

The following will explain other responsibilities in comparison to these characteristics, then we will explain the characteristics of political responsibility.

(14) Dr. Abdullah Ibrahim Nasif, The Extent of Balance of Political Authority with Responsibility in the Modern State, Dar Al-Nahda Al-Arabiya, Cairo, 1981, p. 10.

(15) Dr. Ramzi Taha Al-Shaer, The General Theory of Constitutional Law, Fifth Edition, Dar Al-Nahda Al-Arabiya, Cairo, 2005, p. 521.

(16) Dr. Sayed Mohamed Bayoumi Fouda, The Political, Criminal, and Civil Responsibility of Ministers (A Comparative Study), First Edition, Center for Arab Studies, 2016, p. 463.

First: Distinguishing political responsibility from the legal responsibility of the Prime Minister

Political responsibility has main pillars that are not available in other forms of legal responsibility and that determine the foundations of building this responsibility, its characteristics, and the nature of the penalty stipulated when determining it. This requires clarification in the following points.

1- Criminal liability: Criminal liability requires - in accordance with the principle of legality of criminalization and punishment - a precise definition of the acts that warrant it and those subject to its scope, so that the person knows in advance his/her status with respect to criminal law.

Hence, raising this responsibility in general regarding the commission of a criminally prohibited act and, in case of conviction, it results in the imposition of criminal penalties on its perpetrators, which may impose on them fines and confiscations or affect their freedom such as imprisonment or detention.⁽¹⁷⁾ Therefore, some jurists defined it as the obligation to bear the legal consequences arising from the availability of the elements of the crime, and the subject of this obligation is the punishment or precautionary measure that the law decides against the person responsible for the crime.⁽¹⁸⁾

This shows that criminal responsibility has a historically older appearance than political responsibility. In fact, political responsibility represents a historical development that paved the way for the emergence of criminal responsibility.⁽¹⁹⁾ We conclude from this that criminal responsibility has characteristics and qualities that distinguish it from the political responsibility of the Prime Minister.

At the forefront of these characteristics is the ministerial capacity, which is the basis for subjection to political responsibility. Therefore, this responsibility can only be raised against those who possess ministerial capacity, and here it includes several groups in addition to the prime minister, his/her deputies and ministers and their deputies. While criminal responsibility is broader and more comprehensive, as its provisions apply to everyone, whether they hold ministerial positions or are ordinary individuals. Ministers are subject to criminal law just like ordinary individuals. In this regard, it does not matter what crimes the ministers commit in their private life, as these crimes are punishable. However, what matters are the crimes ministers commit in their public life, i.e. those related to their ministerial positions, such as the crime of embezzlement and other crimes.⁽²⁰⁾

(17) Dr. Khaled Musa Tony, Criminal Responsibility of Ministers, First Edition, Dar Al Nahda Al Arabiya, Cairo, 2009, p. 28.

(18) Muhammad Abdul Kadhim Awfi, Political Responsibility of the Government in the Constitution of the Republic of Iraq for the Year 2005, Master's Thesis, College of Law, University of Baghdad, 2015, p. 8.

(19) Dr. Turki Sattam Al Mutairi, The Committee of Investigation into Ministers' Crimes in Kuwait (A Constitutional Perspective), research published in the Journal of Law, College of Law, University of Kuwait, Issue 4, 2010, p. 116.

(20) Dr. Hassan Abdul Ghani Al-Khatib, Public Law (Constitutional Issues), Zain Legal Publications, Beirut, 2012, p. 94.

Political responsibility is also subject to a special procedural system by establishing the right of the representatives of the nation to accuse the Prime Minister when he/she commits any violation of the provisions of the laws, and a special court is allocated for the trial, as decided by the Constitution of the Republic of Iraq of 2005 in clause six of Article (93) of the Constitution when it entrusted the Federal Supreme Court with adjudicating the accusations directed at the President of the Republic, the Prime Minister, and the ministers, which is regulated by law.

Responsibilities differ in terms of basis. The basis of criminal responsibility results from the commission of criminal offences specified by laws of a retributive nature. As for the basis of political responsibility, it is based on all the actions and behaviors of ministers, whether positive or negative, legitimate or illegitimate, intentional or unintentional. Parliament monitors the general policy of the government, to see the extent of the soundness of the various ministerial procedures and decisions, not only in terms of their conformity with the laws, but also in terms of their suitability to the actual circumstances in which they are found and the extent of their compatibility with the public interest, and the extent to which they achieve the desire of the parliamentary majority, even if that desire conflicts with the law.⁽²¹⁾

The penalty for political responsibility is dismissal or residence as a penalty resulting from a serious breach by the Prime Minister or ministers in carrying out their constitutional duties while exercising the burdens of their office ⁽²²⁾. While the penalties for criminal responsibility are either penalties that deprive freedom such as imprisonment and detention, or restrict freedom such as police surveillance, or deprive rights such as deprivation of appointment to public office, or of a financial nature such as fines and confiscations, or are harmful to reputation such as publishing the ruling in the newspapers ⁽²³⁾. As for political responsibility, it leads to the resignation of the minister individually or the entire ministry after the parliament withdraws confidence from him or her, and one act can arrange both responsibilities together, as the trial of ministers for some crimes they commit that are related to the performance of their duties such as embezzlement, bribery, or financial corruption. raises their criminal responsibility in addition to their political responsibility ⁽²⁴⁾.

(21) Muhammad Abdul Kadhim Awfi, previous source, p. 9.

(22) Dr. Haider Al-Wazzan, Dismissal of the President of the Republic in Case of High Treason, Dar Al-Safa, Amman, 2012, p. 297

(23) Muhammad Salem Karim, The Legal Status of the Minister in the Parliamentary System (A Comparative Study), Master's Thesis, College of Law, University of Baghdad, 2013, p. 44.

(24) Dr. Hassan Abdul-Ghani Al-Khatib, previous source, p. 95.

2- Civil liability:

It is the obligation that falls on a person to compensate for the damage caused to others by his actions or by the actions of the people or things for which he is responsible (25). Therefore, civil liability arises in all cases in which an individual fails to fulfill his legal or contractual obligation towards others, and the penalty is then compensation for the damage caused to others, and the injured party alone has the right to claim compensation, and this right is considered a purely civil right for him (26).

From this we conclude that Civil liability generally arises regarding a person committing an act that is considered a negligent error, and civil liability may arise regarding public authorities and raise the responsibility of the state, and it may arise regarding persons of private law (27). However, political liability only confronts those who possess a political capacity and exercise political authority, and therefore it cannot be arranged and raised against ordinary individuals (28).

Civil liability also arises as a result of the harm that befell an individual or a number of individuals. It arises in all cases that constitute an unlawful harmful act that resulted in harm to others, whether the unlawful act was intentional or unintentional. Therefore, the harm that results from it must be fully compensated without differentiation between the two cases, although the judiciary tends naturally to increase compensation for intentional acts and to measure compensation by the severity of the deed in unintentional acts (29). As for political liability, it applies to all the acts and actions of ministers, whether positive or negative, legitimate or illegitimate, intentional or unintentional.

The party that initiates civil liability shall be the plaintiff in it, the injured person, in accordance with the procedures stipulated in civil laws, litigation and evidence laws, and before ordinary courts. As for political responsibility, it is the responsibility of the party specified by the Constitution and its complementary laws to initiate it.

Responsibility also differs in terms of the penalty that results from each one of them. The penalty for civil liability is the obligation of the responsible person to compensate the injured party, which is usually a sum of money. As for the penalty for political liability, it is a purely political penalty, which is leaving ministerial positions and relinquishing them to other persons who have the confidence of Parliament (30).

(25) Dr. Hassan Ali Dhnoon, Al-Mabsoot in Explaining Civil Law, Wael Publishing House, Amman, 2006, p. 11.

(26) Dr. Abbas Ali Muhammad Al-Hussein, Environmental Civil Liability in Light of Civil Texts and Environmental Legislation, research published in the Journal of the Message of Law, College of Law, University of Karbala, Second Year, Third Issue, 2010, p. 10, Dr. Hassan Ali Dhnoon, previous source, p. 11.

(27) Dr. Sayed Mohamed Bayoumi Fouda, previous source, p. 871.

(28) Dr. Abdullah Nasef, previous source, p. 16

(29) Dr. Abdel Razzaq Ahmed Al-Sanhouri, Al-Wasit in Explaining the New Civil Law (Theory of Obligation in General - Sources of Obligation), Volume Two, Al-Halabi Legal Publications, Beirut, Volume Two 2009, p. 844.

(30) Dr. Wahid Raafat and Dr. White Ibrahim, Constitutional Law, Al-Asriya Press, Cairo, 1937, p. 458.

3- Administrative liability:

It is a liability that falls on the administration in its broad sense - all public and private bodies that practice administrative service activity - when the damage is due to an activity in which the administration is endowed with the characteristics of public authority and when it acts in accordance with the rules of public conduct, aiming to find a kind of difficult balance between the administrative perspective as the injured party and the administration as the guardian of the public interest⁽³¹⁾.

Thus, administrative liability arises when one of the state institutions carries out an illegal activity and what its illegal administrative activity has caused. It includes the activity of the administration or its actions, its material actions and its administrative actions; hence, it becomes clear to that administrative liability is based on three pillars: error, damage, and the causal relationship between them. The penalty for administrative liability is to compensate the injured party for the administrative error⁽³²⁾.

The administrative responsibility of the minister or prime minister stems from the fact that, in addition to the political powers enjoyed by the minister in his/her capacity as a member of the cabinet and an official in the ministry he/she heads, he/she has broad powers in the field of administration, which are based on presidential authority over the employees in the ministry: granting leave, imposing penalties, and issuing instructions and regulatory decisions within the scope of his/her powers. By virtue of this the work plans of his/her ministry and other administrative work are united, and his/her administrative work is subject to administrative oversight like any other employee⁽³³⁾.

The Prime Minister and the Ministers are subject to administrative responsibility as administrative personnel. If they make a mistake during the performance of their duties, which results in harm to a person, administrative responsibility is established and the injured party must be compensated. The PM or Minister bears the amount of the harm personally if the mistake was personal, and the State bears it if the error was public⁽³⁴⁾.

Based on the above, we note that there are important aspects of the difference between administrative responsibility and political responsibility. In the forefront, administrative responsibility is described in terms of the administrative judge's jurisdiction to decide on it according to procedures that often differ from other types of responsibility. The judge's jurisdiction is also determined in terms of the administrative nature of the activity that results in the damage, especially since the body responsible for deciding on political responsibility is the people's representatives in the parliament.

(31) Dr. Abdul Ghani Basyouni Abdullah, Administrative Judiciary, Third Edition, Alexandria Establishment, 2006, p. 723; Dr. Naji Al-Bakoush, Administrative Responsibility, research published on the website, www.fdsf.tun.tn, date of visit 3/20/2017, p. 11

(32) Dr. Suleiman Muhammad Al-Tamawi, Administration Responsibility for its Non-Retirement Work (A Comparative Study), Dar Al-Fikr Al-Arabi, Al-E'timad Press, Egypt, 1954, p. 78; Dr. Ali Muhammad Badir, Mahdi Yassin Al-Salami, and Dr. Issam Abdul Wahab Al-Barzanji: Principles and Provisions of Administrative Law, Dar Al-Kutub for Printing, Baghdad, 1993, p. 33.

(33) Rabi Mufid Al-Ghusaini, The Minister in the Political System, His Position, Role, Powers, and Political Responsibilities, Al-Halabi Legal Publications, Beirut, 2003, p. 45.

(34) Dr. Abdel-Ghani Basyouni Abdullah, Administrative Judiciary, previous source, p. 519.

They also differ in terms of the legal basis for establishing the scope of responsibility, as the the rules of administrative responsibility in terms of its procedures, the reasons for it, and the effects resulting from it are determined by the laws of public service, while the constitution is concerned with determining all the rules of political responsibility, which may also tend in this regard towards some complementary laws.

Each of the officials has a specific goal that differs in parts of its content; thus, the goal of administrative responsibility is to seek to achieve balance within society to ensure the continuation of social stability and coexistence without a sense of injustice, which would undermine social peace.

In contrast, the goal of political responsibility is to ensure the achievement of a balance between the authorities, in a way that guarantees the commitment of each of them to the limits drawn for them according to the constitution, which leads to the stability of the political system and the prosperity of the state.

The two responsibilities also differ in terms of causes, as the causes of administrative responsibility may be an error or a risk that results in harm, while the causes and obligations of political responsibility are exclusively and precisely defined in the constitution.

In more precise terms, administrative liability is based on three pillars: error, damage, and causal relationship. Administrative liability may be based on the idea of error or on the idea of damage ⁽³⁵⁾.

As for political responsibility, it is not necessary for it to be established that there be an error or harm resulting from the ministry's actions. Rather, it is sufficient for it to be established that it is in accordance with the law or that these actions are compatible with the public interest in terms of their suitability to the actual circumstances in which they were issued or the extent to which they achieve the desire of the parliamentary majority ⁽³⁶⁾.

The two responsibilities differ in terms of the protection they provide to individuals. Political responsibility doesn't provide sufficient protection for individuals against the arbitrariness of the administration and its violation of the principle of legality because it doesn't focus on the illegal act itself to decide to cancel it or compensate for it ⁽³⁷⁾. Rather, it is directed at the official himself/herself to decide his/her incompetence to assume authority, while administrative responsibility is directed at the illegal act itself to decide to cancel it or compensate for it.

(35) Dr. Abdul Malik Younis Muhammad, *The Basis of Administrative Responsibility and its Rules, A Comparative Study between the Unified and Dual Judicial Systems*, Dar Al-Kotob Al-Qanuniyah, Al-Mahalla Al-Kubra, Egypt, 2012, p. 45.

(36) Dr. Tharwat Badawi, previous source, p. 333.

The penalty for each of them is also different. The penalty for administrative responsibility is the administration's compensation for the injured party, and it is borne by the Prime Minister or the responsible minister if the error was personal, and it is borne by the state if the error was public. As for the penalty for political responsibility, it is a political penalty represented by dismissal.

It is the resignation of the entire ministry if the responsibility is shared, and the resignation of the responsible minister if the responsibility is individual ⁽³⁸⁾.

Second - Characteristics of the direct political responsibility of the Prime Minister:

An analysis of the elements of the political responsibility of the Prime Minister, its unique features, and the points of difference between it and other forms, the study concludes that the direct responsibility of the Prime Minister has the following characteristics:

1 - Political error: Since the action issued by the Prime Minister in some cases does not lead to the desired result if it leads to public harm that conflicts with the basic interests of the state, regardless of the presence of ignorance, lack of insight, or frivolity, and with no regard to intent ⁽³⁹⁾.

Therefore, the responsibility resulting from it is caused by a political error. However, some jurists believe that it is not necessary for a political error to achieve political responsibility, but rather the mere existence of a difference in viewpoints between Parliament and the Ministry on the general policy of the state is sufficient to trigger the political responsibility of the Ministry before Parliament, so that the latter takes the necessary measures to impeach the Ministry ⁽⁴⁰⁾. Because the Ministry may violate the will of the people and thus violate the general will of the people as a whole, considering that Parliament represents the people and the popular will is embodied in it.

2. General error: Since the responsibility of the Prime Minister isn't limited to a specific type of action, meaning, it includes all positive and negative actions, legitimate and illegitimate, intentional and unintentional, when Parliament monitors the general policy of the Ministry, this monitoring stops at examining and conforming the Ministry's actions or work to the rules of law and the Constitution, i.e. it doesn't stop at monitoring of legitimacy, but rather the monitoring process extends to include the extent to which these actions conform and are appropriate to the general orientations of Parliament with the aim of achieving the public interest of the state, i.e. monitoring of appropriateness ⁽⁴⁰⁾.

(37) Dr. Majed Ragheb Al-Helou, Public Administration Science and the Principles of Islamic Sharia, Dar Al-Jamiah Al-Jadida for Publishing, 2007, p. 57.

(38) Dr. Eric Bardant, Introduction to Constitutional Law, translated by Muhammad Thamer, Al-Sanhouri Library, Baghdad, 2012, p. 261.

(39) Dr. Ahmed Ibrahim Al-Sabili, Political Responsibility as Head of State in Positive Systems and Islamic Political Thought, PhD Thesis, Ain Shams University, Cairo, 1990, p. 338.

(40) Dr. Bashiah and Ahmed Abdullah, Political Responsibility of the Executive Authority in the Parliamentary System, Publications of the Kurdistan Center for Strategic Studies, 2013, p. 228.

3. Solidarity error: The political responsibility of the Prime Minister is not an absolute personal responsibility, but may result from the actions of others, i.e. the ministry is responsible for the actions of all its members who work under its authority. Therefore, the Prime Minister cannot evade responsibility and place it on the subordinates under the pretext that they did not perform the work that requires responsibility, or that they acted without referring to him/her. This does not exempt him/her from political responsibility, considering that he/she is responsible for the general policy of the ministry and all those under his/her functional command ⁽⁴¹⁾.

4. It is a present mistake. The political responsibility of the Prime Minister before Parliament means the existence of a parliamentary oversight process over the Ministry, and this process in turn consists of two parties, namely the party that exercises oversight, which is Parliament, and the party subject to oversight, which is the Ministry. Accordingly, to achieve political responsibility, two parties must exist: Parliament and the Ministry. This means that political responsibility cannot be raised in the absence of one of the two parties, i.e. political responsibility cannot be raised after the end of the Ministry's term because it is based in essence on the necessity of the existence of a relationship between Parliament and the Ministry, and this can only happen in its real time, as it only exists when the Ministry is in power, as political disagreement is possible between Parliament and the Ministry.

Section Two

The Special Nature of the Direct Political Responsibility of the Prime Minister in the 2005 Constitution

Naturally, all actions done by the ministry are subject to political responsibility; accordingly, it includes the joint political responsibility related to the actions of the Prime Minister, as the first guide of the general policy of the ministry, and the individual responsibility that includes the actions of one of the ministers and his/her responsibility before the legislative authority for the policy of his/her ministry, and under the parliamentary system and after the transfer of actual authority from the head of state to the ministry; this transfer results in the lack of political responsibility of the head of state in the parliamentary system.

In order to clarify the special nature of the direct responsibility of the Prime Minister and its distinction from the responsibility of the Head of State, it will be discussed in the first section, while the second section will examine its distinction from the responsibility of the Minister.

(41) Dr. Ibrahim Abdel Aziz Sheha, The Status of the Executive Authority, previous source, p. 42.

The responsibility of the Prime Minister vs. the responsibility of the Head of State.

The parliamentary system in its traditional form is based on the lack of responsibility of the head of state and the lack of actual and real powers in the affairs of government. The head of state only possesses the nominal side of them, and the ministry in this system directly possesses the affairs of the real authorities, as it represents the original and effective axis in directly exercising the official affairs ⁽⁴²⁾.

The failure of the head of state to exercise any manifestation of actual authority results in his/her inability to be politically responsible before parliament, in application of the rule of (the correlation between authority and responsibility). Where there is authority, there is responsibility, and where there is no authority, there is no responsibility. He/she does not set and implement the general policy of the state himself/herself, nor does he/she decide matters according to his/her whims and personal policy, but rather leaves all of that to a ministry supported by parliament and responsible before it ⁽⁴³⁾.

The constitutional system in Japan followed suit, as Article (1) of the Constitution of Japan of 1946 stipulated that the emperor is the symbol of the state and the unity of the people, and derives his/her position from the will of the people, who enjoy absolute sovereignty ⁽⁵⁰⁾.

Article (4) of the Constitution of the State of Japan of 1946 also stipulates that "The Emperor alone shall undertake such duties relating to state affairs as are stipulated in this Constitution. He shall have no powers relating to the government."⁽⁵¹⁾ It is understood from that article that the emperor's powers are limited within the framework of the competencies that the Constitution specifies for him/her in matters relating to state affairs after they are decided upon and approved by the Ministry. The emperor cannot in any way decide the will of the State and exercises those powers in the name of the people.

Article (3) of the Constitution of Japan 1946 states that the advice and approval of the Council of Ministers must be sought for all decisions issued by the emperor regarding state affairs, and the Council of Ministers is responsible for that ⁽⁵²⁾. Accordingly, the Emperor exercises only nominal powers, and his/her decisions are not effective except after the advice and approval of the Council of Ministers for all decisions related to state affairs, and the Council of Ministers is solely responsible for that before the Parliament for the decisions signed by the emperor. From this, it is clear that the Constitution has placed the real authority in the hands of the Ministry. In reality, the legal system of the emperor's position is an individual system and cannot be compared to the head of state as is the case in the republican system, as the emperor is only a symbol of the Japanese state ⁽⁵³⁾.

(42) Dr. Saeed Sayed Ali, previous source, p. 45.

(43) Quoted from: Dr. Mohsen Al-Aboudi, Political Systems, Dar Al-Nahda Al-Arabiya, 2004, p. 326; Dr. Rabie Anwar Fath Al-Bab, Political Systems, no publisher, 2008, p. 345; Morsin Duvergé, previous source, p. 126; Dr. Ahmed Raslan, Political Systems and Constitutional Law, Dar Al-Nahda Al-Arabiya, Cairo, 2005, Part One, p. 286.

(44) Dr. Shaaban Ahmed Ramadan, A Brief Introduction to Political Systems and Constitutional Law, Dar Al-Nahda Al-Arabiya, Cairo, 2007, p. 244.

(50) Article (1) of the Constitution of the State of Japan of 1946.

The Constitution of the Republic of Iraq for the year 2005 granted the President of the Republic powers and then subjected him/her to responsibility. The essential idea adopted by the constitutional legislator is represented in expanding the scope of the President of the Republic's responsibility, through expanding the number of cases that allow for the initiation of responsibility. On the other hand, the Council of Representatives was assigned the task of questioning the President of the Republic from the political and criminal aspects (A). Article (61/sixth/a) of the Iraqi Constitution for the year 2005 stipulated that questioning the President of the Republic based on a reasoned request by an absolute majority of the members of the Council of Representatives (B). Article (138/second/b) stipulated that (he provisions relating to the dismissal of the President of the Republic contained in this Constitution shall apply to the President and members of the Presidency Council. As for (second-c), it states that the Council of Representatives may dismiss any member of the Presidency Council by a majority of three-quarters of its members due to incompetence or integrity (C). It was shown that the cases of exempting any member of the Presidency Council from his/her position, including the President of the Republic, due to incompetence (61) and integrity which indicates the existence of cases other than those stipulated in Article (61), which entails saying that the responsibility of the President of the Republic in Article (61) is criminal responsibility, because his/her dismissal according to Article (138) is done by Parliament without referring the matter to the competent court (57).

Lack of integrity refers to the president's illegitimate exploitation of the position to achieve illegitimate material or moral gains. As for incompetence, it refers to the president's lack of qualification and ability to perform the tasks assigned to him constitutionally (58).

Referring to Article (32) of the House of Representatives' internal regulations for the year 2006, it stipulated that "the House of Representatives shall undertake the work of oversight of the executive authority, and oversight shall include the following powers":

(51) Article (4) of the Constitution of the State of Japan for the year 1946.

(52) Article (3) of the Constitution of the State of Japan for the year 1946.

(53) Dr. Hadi Mishaan Rabie, *Modernization in Japan and its Impact on the Development of Political Thought*, Al-Aref Publications, Beirut, Lebanon, 2009, p. 63.

(54) Saleh Dhiab Mani Ali, *Executive Powers of the Legislative Authority in Iraq (A Comparative Study)*, Master's Thesis, Al-Alamein Institute for Graduate Studies, Najaf Al-Ashraf, 2014, p. 156.

(55) Article (61/Sixth/First) of the Constitution of the Republic of Iraq for the year 2005.

(56) Article (138/Second) of the Constitution of the Republic of Iraq for the year 2005.

(57) Zeina Saheb Kozan Abdul Abbas Al-Silawi, *The Constitutional Status of the Head of State under the Iraqi Constitution of 2005 (A Comparative Study)*, Master's Thesis, College of Law and Political Science, University of Kufa, 2010, p. 92.

(58) Raed Kazem Attia, *The Extent of Balance between the Authority and Responsibility of the Head of State in the Parliamentary System (A Comparative Study)*, Master's Thesis, College of Law and Political Science, University of Kufa, 2012, p. 82.

First: Questioning the members of the Presidency Council and questioning and interrogating the members of the Council of Ministers, including the Prime Minister and any other official in the executive authority.

Second - Conducting an investigation with any of the officials referred to above regarding any incident that the Council deems to be related to the public interest or the rights of citizens.

Third: Requesting information and documents from any official body, regarding any issue related to the public interest or the rights of citizens or the implementation of laws or their application by the bodies and institutions of the executive authority.

Fourth: Requesting the presence of any person before it to give testimony or clarify or provide information regarding any issue that was presented before the House of Representatives and the subject of its discussion (59).

From the analysis of the constitutional articles (61/sixth/a) and Article (138/second), it can be said that the legislator has moved towards achieving a state of relative balance between the powers of the President of the Republic and his/her responsibility, and that he/she has adopted the trend that subjects the President of the Republic to political accountability for the actions he/she commits during the exercise of his constitutional duties, which constitutes a violation or deviation from the rules of the parliamentary system. Perhaps the legal justification for subjecting the President of the Republic to political accountability is represented by his/her enjoyment of actual and real powers in the affairs of government.

Distinguishing the responsibility of the Prime Minister from the responsibility of the Minister

The Minister is the one who is entrusted with the tasks of one of the ministries and assumes its presidency and manages and supervises its interests and undertakes the implementation of the general policy drawn up by the Council of Ministers (60). From this, it becomes clear that the responsibility of the Minister is the individual political responsibility before the legislative authority for the policy of the ministry and arises as a result of the individual action of one of the ministers in a matter related to the management of the affairs of the ministry. It results in the removal of the minister who was impeached from power without affecting the rest of his/her colleagues from the other members of the government. Individual responsibility is raised if the action is related to the internal policy of the ministry, or when the action is issued by the Minister in his/her capacity as the highest administrative head of the ministry, or by the bodies and institutions affiliated with the ministry in his/her capacity as he/she supervises them (61).

(59) Article (32) of the Internal Regulations of the Council of Representatives for the year 2006.

(60) Dr. Musaddiq Adel Talib, *The Minister in Iraqi Constitutions (A Comparative Analysis Study)*, First Edition, (No Place of Publication), 2015, p. 18.

(61) Dr. Muhammad Abdul Mohsen Al-Muqati' and Dr. Yasser Al-Assar, *Constitutional Limits of the Minister's Responsibility for Public Bodies and Institutions*, Scientific Symposium of the Faculty of Law at Kuwait University, previous source, pp. 242 and 264.

Accordingly, the minister has political and administrative powers, the first of which he/she exercises within the framework of setting the general policy of the state and is represented in approving the general policy of the state internally and externally, as well as proposing bills that concern his/her ministry and also preparing and proposing draft regulations and instructions that concern his/her ministry and that are issued by the Council of Ministers. These powers are vested on the minister as a member of the Council of Ministers. As for the administrative powers of the minister, he/she is responsible for them in his/her capacity as the head of the administrative hierarchy in the ministry that he/she heads, and this capacity entails broad powers in the field of administration, which stem from his/her presidential authority over the employees in his/her ministry, who constitute the basic part of the ministry.

By reviewing the legal systems of the countries under study, we find that Britain, after the continuous expansion of complexity and overlap in the powers and authorities granted to the minister, after many important political decisions were taken by the minister rather than by the Council of Ministers, the main task of the Council of Ministers is to formulate the general policy of the state, as the Council of Ministers dominates the executive and administrative affairs of the state and is responsible for setting the general policy of the state in internal and external affairs and supervising the implementation of these policies and directing and coordinating the work of the ministries and their affiliated bodies. The Prime Minister announces the policy of the ministry in the Speech from the Throne that he/she delivers at the opening of the sessions of Parliament, as the Speech is the starting point in implementing the ministerial program. The ministers implement the general policy of the state within the scope of their ministries, including issuing the organizational and individual decisions necessary to implement this policy within the scope of the tasks undertaken by the ministry (62).

However, the legal system in Japan considered each minister fully responsible for managing the affairs of the ministry and its affiliated agencies under existing legislation.

The ministers are politically and administratively accountable to the Prime Minister, in addition to the PM authority to appoint and dismiss them based on Article (68) of the Constitution of Japan for the year 1946, which states that the Prime Minister shall appoint the ministers. However, the majority of the number of ministers shall be chosen from the members of Parliament. The Prime Minister may dismiss the ministers from their positions according to his choice (63). Also, Article (69) of the same Constitution, which states that if the House of Representatives adopts or rejects a resolution of impeachment, the Council of Ministers must resign collectively, unless the House of Representatives is dissolved within ten days (64). It is clear to us from this that there is no individual responsibility for the ministers before the House of Representatives, and the Prime Minister in Japan has been granted the authority to dismiss the ministers when the minister neglects his/her duties without referring to the House of Representatives (65).

(62) Dr. Al-Sayed Sabry, previous source, p. 395.

(63) Article (68) of the Constitution of the State of Japan for the year 1946.

(64) Article (69) of the Constitution of the State of Japan for the year 1946.

(65) Dr. Ibrahim Muhammad Ali, The Constitutional System in Japan, Dar Al Nahda Al Arabiya, p. 156.

In addition, ministers are collectively responsible before Parliament, based on Article (66) of the same constitution, which states that “the Council of Ministers shall consist of the Prime Minister, who shall chair the Council, and other ministers, in accordance with what is stipulated by law. The Prime Minister and ministers must be civilians” (66).

As for the approach in Iraq, it was organized by Article (83) of the Constitution of the Republic of Iraq for the year 2005, when it stated that “the responsibility of the Prime Minister and the ministers before the Council of Representatives shall be joint and personal” (67). The constitutional legislator decided in this text that the minister is jointly and individually responsible for his/her personal actions and behaviors, i.e. the actions he performs, all his/her positive and negative actions, and all the actions of his/her subordinates who work under his/her authority.

Also, based on Article (61) of the same constitution, it stipulates that the House of Representatives may withdraw confidence from a minister, by an absolute majority, and he/she shall be considered resigned from the date of the decision of impeachment. The issue of confidence in the minister may not be raised except based on his/her desire or a request signed by fifty members following the discussion of an interpellation directed at him/her, and the House shall not issue its decision on the request except after at least seven days from the date of its submission (68).

This is what was confirmed by Article (63) of the House of Representatives’ internal regulations for the year 2007, which states that “the House of Representatives may impeach a minister by an absolute majority, and he/she shall be deemed to have resigned from the date of the decision to withdraw confidence. Confidence may not be withdrawn from a minister except based on his/her desire or a request signed by fifty members following a discussion addressed to him, and the House shall not issue its decision on the request except after at least seven days from the date of its submission” (69).

Based on the above, it can be said that the Constitution of the Republic of Iraq for the year 2005, as well as the internal regulations of the Council of Representatives for the year 2006, stipulate the individual responsibility of the members of the Council of Ministers, which, when it occurs, results in the withdrawal of confidence from the minister concerned and thus the necessity of his/her resignation.

(66) Article (66) of the Japanese Constitution for the year 1946.

(67) Article (83) of the Constitution of the Republic of Iraq for the year 2005.

The issue of confidence in ministers is raised in two cases: the first is based on the desire of the minister, by asking the parliament whether he/she is still worthy of its confidence, and the second is based on a request signed by fifty members. The request is submitted based on a previous interrogation of the minister concerned. The vote on the decision to withdraw confidence in the House of Representatives is by an absolute majority, and the council's decision to withdraw confidence is not issued until at least seven days have passed from the date of submitting the request. Regarding the effect of withdrawing confidence from a minister, he/she is considered resigned from the date of issuance of the withdrawal of confidence. Terminating the minister's service in this case does not lead to the creation of a ministerial vacuum, as the affairs of the ministry are quickly referred to another minister or to the Prime Minister to conduct its business until a minister is chosen for this ministerial portfolio.

Conclusion:

At the end of what we have presented of scientific effort devoted to analyzing the limits of the direct responsibility of the Prime Minister and to reach important results that contribute to the development of this system, we present below the most important results and recommendations.

Results:

1. We notice from the comparative countries the extent of the broad jurisdiction of the Prime Minister in implementing the general policy of the state. The PM is the primary guide for the ministers in implementing the general policy by ensuring this implementation, which gives him/her a kind of oversight over all the ministers and allows him/her to take what he/she deems appropriate in order to implement this policy. The ministers are also politically accountable to the Prime Minister for their failure to implement the general policy. This is something that the legal system in Iraq did not decide, as it subjects the Prime Minister to direct responsibility for failure to implement the general policy of the state.
2. It is noted that the drafters of the constitutions in the countries under study were serious about achieving a balance between the executive authority and the legislative authority, and that this had a significant impact on the success of the general policy plans in the country, such that the Prime Minister was given broad authority to dissolve the Legislative Council, which was not decided by the constitutional legislator in Iraq, which restricts the Prime Minister's authority to dissolve with the approval of the President of the Republic and the ratification of the Council itself by an absolute majority.
3. The Prime Minister represents an important position as the direct executive official and the focal point of the ministry and its head. There should be real guarantees that enable him/her to perform his/her constitutional duties in a way that guarantees the accomplishment of the government program that he/she announced, away from influence and pressure, especially with regard to increasing his/her responsibility.

Recommendations

1. We propose the following wording for Article (78) of the Constitution of the Republic of Iraq for the year 2005:

“The Prime Minister is responsible for planning and implementing the general policy of the state and supervising the work of ministries and entities not affiliated with a ministry, and the Commander-in-Chief of the Armed Forces manages the Council of Ministers, chairs its meetings and has the right to dismiss ministers.”

2. We recommend drawing the attention of the constitutional legislator to the necessity of reviewing Article (64) of the Constitution, which pertains to the procedures for dissolving the House of Representatives, and granting the Prime Minister broader authority to dissolve the Council. This provides a pressure point on the Council that compels it to fulfill its constitutional obligations and legislate many important laws that contribute greatly to putting the components of the state's general policy into practice.
3. We propose to precisely define the actions that require the Prime Minister to be held responsible, such as failing to formulate the state's general policy and violating constitutional duties. Therefore, political responsibility cannot be raised against him/her except in the event that these obligations are met. This ensures that he/she performs his/her duties effectively and also guarantees the legislative authority the right to determine his/her responsibility when one of these actions is met.
4. Here we draw the legislator's attention to the necessity of including these obligations in the draft law on adjudication of accusations directed against the President of the Republic, the Prime Minister and the Ministers, which is referred to in Article (93), paragraph (six) of the Constitution of the Republic of Iraq for the year 2005.

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