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State of Emergency in a Caretaker Government (Iraq Constitution of 2005)

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Abstract: A state of emergency is one of the most important constitutional tools used by States to confront serious threats to security and public order, such as wars, disasters, or internal unrest. Article 61/Ninth of the Iraq Constitution of 2005 regulates the state of emergency. The Council of Ministers, in agreement with the President of the Republic, is authorized to declare it and present it to the Council of Representatives for approval by a two-thirds majority. However, the problem arises when a caretaker government exists, a government with limited powers according to Iraqi constitutional custom and rulings of the Federal Supreme Court. Its mandate is limited to managing daily and routine affairs, without making fateful or strategic decisions, such as requesting the declaration of a state of emergency. This is a fundamental decision that exceeds its limited authority. Furthermore, a state of emergency is characterized by its exceptional nature, and its declaration requires the presence of a government with full powers, as it affects fundamental rights and freedoms and has serious repercussions for the state's authorities. Since this government lacks full mandate and is constitutionally prohibited from requesting the declaration of a state of emergency, this research discusses how to deal with crises that occur during the term of

this government, and presents some constitutional and legal solutions and legitimizes the decisions, procedures, and material and legal measures taken by this government to confront exceptional circumstances. Therefore, the research aims to balance the necessity of protecting the entity of the State and respecting constitutional principles and guaranteeing rights and freedoms.

Keywords: caretaker government; emergency; Iraq Constitution; exceptional legitimacy

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I. Introduction

The legislative and executive branches of the Republic of Iraq cooperate to address exceptional circumstances through the declaration of a state of emergency. If the declaration is approved by the legislative branch, the actions of the executive branch remain subject to legislative oversight. This is because, in a parliamentary system, the executive branch derives the legitimacy of its ordinary and extraordinary actions

from the confidence granted to it by the legislative branch. However, in some cases, the relationship between the two branches is severed, and with it, the legal basis granted to the executive branch. This limits its actions to maintaining the status quo and ensuring the continuity of public services, while avoiding actions that would require actual oversight. Nevertheless, exceptional circumstances necessitate that a caretaker government address the situation, even if these actions deviate from the principle of legality, because preserving the State's integrity and public order takes precedence over legal texts designed to serve society.

Previous Studies. The researcher reviewed a number of scientific literature that contributed to clarifying the theoretical aspect of the research.

1. Yasser Atiwi Aboud Al-Zubaidi. Problems of Assigning the Interim Prime Minister the Duties of Managing Daily Affairs According to the 2005 Constitution of the Republic of Iraq.

This study clarifies the constitutional gaps regarding the powers and limits of a resigned government, focusing on legal oversight of exceptional decisions. It is essential for understanding the interim government's ability to declare or manage a state of emergency within the constitutional framework.

2. Aqeel Taki Saleh Al-Aridhi: The Duration of a Caretaker Government and the Legal Implications of Exceeding its Term. This study examines the impact of the caretaker government's duration on the legitimacy of decisions, highlighting legislative and judicial oversight. It clarifies the relationship between the continuation of the caretaker government and the limits of its ability to make emergency decisions, a significant new development in this research.

3. Zahraa Abdul-Hafiz Mohsen and Majid Majhoul Darwish: The Caretaker Government in Iraq: Legislation and Practice. This study analyzes the legislative and practical aspects of a resigned government, focusing on the legal and political challenges of executive decisions. It helps to understand the practical constraints that a government may face when managing emergency situations.

4. Nuha Hadi Talib: The Relationship of a Caretaker Government with Other Authorities in Light of the 2005 Constitution of the Repub-

lic of Iraq. This study clarifies parliamentary and judicial oversight of a resigned government and the limits of its powers, especially in exceptional circumstances. It provides a general framework for determining the legitimacy of exceptional measures during a state of emergency.

While previous studies are important in clarifying the constitutional framework of a caretaker government, this research differs in the following points.

1. It focuses solely on the developments of a state of emergency within a caretaker government, an aspect not directly addressed in previous studies.

2. It analyzes the relationship between the duration of a caretaker government and the limits of its ability to make exceptional decisions, linking this to the practical reality of governance in Iraq after the 2005 Constitution.

3. It proposes clear constitutional solutions to address the legal vacuum in a state of emergency, adding legal value to the research and making it more contemporary and original compared to previous studies.

4. It provides a comprehensive view of the constitutional and regulatory constraints on a resigned government when managing crises, which represents a new area of knowledge that has not been emphasized in previous studies.

The importance of this research lies in the novel insights it offers by monitoring and analyzing recent constitutional and practical developments in Iraq related to regulating the state of emergency during a caretaker government period, according to the 2005 Constitution. These are developments that have not been addressed in depth in previous studies and can be highlighted as follows.

1. Increased Transitions to a Caretaker Government: in recent years, Iraq has witnessed repeated instances of the executive branch assuming a caretaker government status due to political crises and the obstruction of government formation. This reality has raised scholarly questions about the extent to which a government with limited powers can declare or manage a state of emergency.

2. Emergence of Constitutional Interpretations from the Federal Court: recent rulings issued by the Federal Court have restricted the

powers of a resigned government, but they have not explicitly defined how it should deal with a state of emergency. These developments have created an interpretative gap, which is one of the most important novel insights addressed by this research.

3. The absence of explicit regulations for declaring a state of emergency within the powers of a caretaker government: the Iraqi constitutional reality reveals that the 2005 Iraq Constitution did not differentiate between fully empowered governments and transitional governments regarding the declaration of a state of emergency. This absence has become more serious with the expansion of caretaker governments, a fundamental development that this research attempts to analyze and define its limits.

4. A new conflict between the necessities of national security and the constraints of a caretaker government: security events (terrorism, internal conflicts, political tensions) have demonstrated the State's occasional need to activate a state of emergency during periods of power transition. This represents a modern dilemma between security requirements and the daily constraints of government, a matter that has only been addressed marginally.

5. The growing need for a legislative framework regulating the relationship between a state of emergency and a caretaker government: political developments in Iraq have demonstrated an urgent need for specific legislation or a constitutional amendment that clearly defines the limits of the transitional government's powers in exceptional circumstances.

6. The scarcity of specialized Iraqi studies on the subject: this topic represents a genuine research gap. Since most studies have addressed emergencies in general, or their powers in general, without integrating the two frameworks, this research presents a novel scientific approach by linking emergencies with the caretaker government within the Iraqi context.

The main problem addressed in the present research is that the 2005 Iraq Constitution established a constitutional framework for declaring a state of emergency and specified the entities authorized to exercise these powers, but it did not clearly address the extent to which a caretaker government could exercise these exceptional powers. The

problem arises from the absence of explicit provisions defining the limits of temporary executive authority in critical circumstances. This leads to a conflict between the necessity of confronting the emergency and the restrictions imposed on the caretaker government, which is supposed to have a clearly defined mandate.

Therefore, the research problem is summarized in the following question: does the caretaker government possess the authority to declare a state of emergency according to the 2005 Constitution, and to what extent is its exercise of this authority legitimate given the ambiguity of the constitutional text and the multiplicity of political and legal interpretations?

Research Methodology. In our research on the state of emergency in a caretaker government (Iraq Constitution of 2005), we adopted an analytical approach. We analyzed the relevant constitutional texts, as needed by the research topics, to identify shortcomings, and it is divided into three sections. The first addresses the concept of a state of emergency, the second the concept of a caretaker government, and the third examines the state of emergency in terms of restriction and necessity within a caretaker government.

II. The Concept of a State of Emergency

Interest in the concept of a state of emergency has grown, given that exceptional circumstances are expected in today's world. Addressing these circumstances requires the executive authority to possess broad powers. Due to the seriousness of this matter, it is necessary to understand the concept of a state of emergency. This requirement is divided into two sections: the first addresses the legal definition of a state of emergency, while the second examines its characteristics.

II.1. The Legal Definition of a State of Emergency

Iraqi law defines a state of emergency as “a situation in which the Iraqi people are exposed to a grave and imminent danger that threatens individuals' lives, arising from a continuous campaign of violence by any number of people that prevents the formation of a broadly rep-

representative government in Iraq, disrupts the peaceful political participation of all Iraqis, or serves any other purpose.”¹

In the French Emergency Law No. 3 of 1955 (Art. 1), it was defined as “the situation in which French territory, in any part thereof, or in Algeria or its overseas territories, is exposed to an imminent danger resulting in serious attacks on public order, or when events occur that, by their nature and gravity, constitute public disasters.” Similarly, Art. 1 of Egyptian Emergency Law No. 162 of 1958 defined it as “the situation in which security and public order in the territory of the Republic, or a region thereof, are endangered, whether due to the outbreak of war, the existence of a situation threatening war, internal disturbances, public disasters, or the spread of an epidemic.”

What concerns us in this research is the analysis of the Iraqi law, which provides an imprecise definition. The phrase “imminent and grave danger” is broad in meaning and gives the executive authority very a wide scope of powers to invoke and declare a state of emergency, especially since the sources of danger are not listed exhaustively. Furthermore, it indicates that the source of the danger the justification for declaring a state of emergency must be a threat to individuals’ lives. This raises questions, as is the question of whether the State is responsible for the lives of individuals but not their property?

Furthermore, the phrase “continuous campaign empties the concept of imminent and grave danger” of its meaning. A state of emergency cannot be declared immediately upon the occurrence of a danger unless one waits until the act constituting the danger becomes continuous. This is illogical and unreasonable, as confronting exceptional circumstances requires a swift and decisive action before undesirable consequences arise. Therefore, waiting for the danger to become continuous while simultaneously waiting for the completion of constitutional declaration procedures makes it impossible to overcome the exceptional situation.

In addition, the continuation of the campaign of violence must be by any number of people to prevent the formation of a broadly representative government in Iraq... or for any other purpose. The legislator has

¹ Art. 10f National Safety Defense Order No. 1 of 2004.

defined the source of the danger as individuals, excluding other risks such as disasters and epidemics. Moreover, the legislator has prioritized declaring a state of emergency to protect political affairs, while the rights and freedoms of individuals should be the primary consideration.

II.2. Characteristics of a State of Emergency

A state of emergency is based on several characteristics, which will be discussed in the following paragraphs.

1. Exceptional legitimacy. The importance of addressing the exceptional circumstance has given the state of emergency its exceptional legitimacy, both legally and judicially. Legally, it finds its basis in the Constitution (Morsi, 2009, p. 179) or ordinary legislation.² This includes specifying the necessary guarantees to prevent infringement on rights and freedoms. Therefore, any measure taken by the authority implementing the state of emergency finds its basis in the Constitution or the law, and this is one element of exceptional legitimacy. In the judiciary, the Federal Court of Cassation addressed the content of the state of emergency by compensating the owner of land seized by the State for the purpose of establishing camps for displaced persons when ISIS (Islamic State in Iraq and Syria) occupied cities in Salah al-Din.³

2. The fundamental independence of a state of emergency. The state of emergency cannot be granted exceptional legitimacy unless there are rules regulating the work of the legislative and executive authorities in ordinary and exceptional circumstances. The reason for the distinction is that the rules designed to govern ordinary circumstances are insufficient to govern exceptional circumstances. Here, the urgent necessity to preserve the safety of the State and individuals, as well as the continuity of public services, dictates the creation of new exceptional rules that are completely different from the rules of ordinary provisions, possessing their own inherent independence to govern extremely serious circumstances (Al-Akeeli and Al-Dhaheri, 2017, p. 64).

² National Safety Defense Order No. 1 of 2004.

³ Federal Court of Cassation Decision No. 5238/Civil panel/2019. Available at: www.sic.ig. [Accessed 15.10.2024].

3. Temporary application. A state of emergency is established to address an exceptional circumstance. Naturally, its existence and cessation are contingent upon the exceptional circumstance. Accordingly, the relevant legislation agrees on the duration of its declaration, implementation, and extension. The declaration of a state of emergency typically specifies its duration, after which it automatically expires unless there is a sufficient reason or justification compelling the ruling authority to extend it according to specific rules, whether stipulated in the constitution or ordinary laws. In this regard, for example, we find Art. 61/9/b of the 2005 Constitution of the Republic of Iraq, which is currently in force, stating: “A state of emergency is declared for a period of thirty days, renewable with approval each time.” However, while this text specifies the duration of its application, it is criticized for not outlining the rules to be followed in the event of its extension.

III. The Concept of a Caretaker Government

One of the most prominent constitutional issues surrounding this concept, which remains unresolved, is the lack of a clear definition of a “caretaker government” in the 2005 Constitution of the Republic of Iraq. This includes the circumstances under which a government transitions to this status and its impact on addressing exceptional circumstances during its term. To clarify this, the discussion will be divided into two sections: the first will define a caretaker government, and the second will address the circumstances under which a government becomes a caretaker government.

III.1. Definition of a Caretaker Government

This government is defined as “a change in the legal status of the existing government from a government with full constitutional powers to one with limited powers, resulting from constitutional practices stemming from political realities. Its primary task is to ensure the continuity of public services and to maintain the government within the framework of existing legal systems and rules, without creating or amending those systems (Misrup, 2019, p. 92).

This definition adopts a narrow understanding of a caretaker government, limiting its actions to daily matters that maintain the uninterrupted operation of public services to meet public needs. This definition does not include urgent or emergency matters within the scope of caretaker government.”

Odent defined it as “all actions that do not involve difficulties or significant political or legal choices” (Lachaize, 1952, p. 65). This definition is criticized for restricting the concept of “ongoing actions” by stipulating that they must be actions that manage public facilities and that they do not expose the responsibility of its ministerial members, as it no longer enjoys the confidence of Parliament and is no longer capable of making important political decisions (Badr, 2003, p. 599). It is worth noting that this government is based on an undefined concept. The government may be bound to its specific term, regardless of the actions it undertakes, whether ordinary or of paramount importance, or its actions may be limited to daily tasks within that term.

The Iraqi Council of Ministers’ Internal Regulations No. 2 of 2019 define its actions as “taking decisions and measures that cannot be postponed and that ensure the continued and regular operation of state institutions and public facilities. This does not include, for example, proposing draft laws, contracting loans, appointing and dismissing individuals from senior state positions, or restructuring ministries and departments.”⁴

It is noteworthy that the definitional phrases are broad in meaning, thus removing any legal impediment to this government declaring a state of emergency. The first part states, “Taking decisions and measures that cannot be postponed... ensuring the continued functioning of state institutions.” This applies to a state of emergency, which cannot be postponed, as addressing an exceptional circumstance requires speed and decisive action, and is essential for the continuity of public services. Furthermore, this is not among the actions listed in the definition. However, the Iraq Constitution of 2005 makes only a brief reference to a caretaker government.⁵ When compared to the constitutional text

⁴ Art. 42/Second of the Internal Regulations of the Iraqi Council of Ministers No. 2 of 2019.

⁵ Art. 61/Eighth/D and 64/Second of the 2005 Iraq Constitution.

regulating the declaration of a state of emergency.⁶ It becomes impossible for this government to declare a state of emergency, as indicated by Art. 13/First, which stipulates the invalidity of any text or procedure that contradicts the provisions and articles of the Constitution.

Between the law and the constitution, the Federal Supreme Court ruled that a caretaker government does not have the authority to declare a state of emergency. The court interpreted the phrase “daily affairs” and defined the government’s powers and the nature of its decisions. It concluded that this means “a government that has transitioned from a normal government with full powers to one with limited powers, tasked with managing daily affairs, including decisions and actions necessary for the continued operation of public services. This does not include decisions with political motivations that significantly impact Iraq’s political, economic, and social future, nor does it include proposing draft laws, contracting loans, appointing or dismissing officials from senior government positions, or restructuring ministries and departments.”⁷

However, it would have been more appropriate for the Federal Supreme Court to grant the caretaker government the authority to address urgent or exceptional matters that cannot be postponed. While this government may not be constitutionally granted full authority, practical considerations dictate that it must address the situation, as it is the closest to it and best positioned to respond to the needs of the situation if the exceptional circumstance is left unaddressed. Since there are no constitutional or legal texts to rely on, this would endanger the State and its public order. Therefore, a balance must be struck between a caretaker government and declaring a state of emergency to avoid a constitutional vacuum that could expose the State to danger.

III.2. Cases of the Government Becoming a Caretaker Government

It is natural that the relationship between the legislative and executive branches in a parliamentary system does not proceed at a consistent pace. If this relationship is disrupted, the result may be the transfor-

⁶ Art. 61/Ninth of the 2005 Iraq Constitution.

⁷ Federal Court Decision No. 121/Federal/2022 dated 17 May 2022. Available at: <https://www.iragfsc.ig> [Accessed 23.10.2024].

mation of the Council of Ministers into a caretaker government. This is not the only instance of the Council of Ministers becoming a caretaker government. There are some exceptional circumstances that the Council may face that hinder its ability to perform its duties according to the principles of the parliamentary system, leading the Council of ministers to the same outcome.

To fully understand the above and its relationship to declaring a state of emergency, we must divide this section into two parts. The first will address the legal cases, and the second will address the exceptional cases.

I. Legal cases. The Iraq Constitution of 2005 and the Internal Regulations of the Council of Ministers No. 2 of 2019 stipulate the legal cases in which the Council of Ministers becomes a caretaker government.

1. Political responsibility. If the legislative authority uses its power to withdraw confidence from the entire Council of Ministers, the Prime Minister and the ministers continue in their positions to conduct daily affairs for a period not exceeding (thirty days) until confidence is granted to the new Council of Ministers.⁸ Since the confidence granted to the Council of Ministers is the basis of the actual oversight required for declaring a state of emergency, as it restricts the Council when using its exceptional powers during a state of emergency, withdrawing it renders oversight useless from a legal and political standpoint, and is limited to its moral value (Adel, 2022, p. 9). Moreover, the work of the Council of Ministers in this case is separate from the head of State, and this is completely contrary to the condition of the request to declare a state of emergency signed by the President of the Republic and the Prime Minister.⁹

2. Dissolution of Parliament. Upon the dissolution of Parliament, the government becomes a caretaker government until a new Parliament is elected and grants confidence to the new government.¹⁰ This is to prevent the executive branch from being in a stronger position than the legislative branch (Shiha, 1987, p. 416). Just as the dissolution weakens the latter's powers, the former must be similarly weakened.

⁸ Art. 61 and 76 of the 2005 Iraq Constitution.

⁹ Art. 61/A of the 2005 Iraq Constitution.

¹⁰ Art. 64/Second of the 2005 Iraq Constitution.

Furthermore, the legislature has defined the legal status during the period from the issuance of the dissolution decree until the election of the new Parliament. This status entails the cessation of Parliament's constitutional functions, namely legislation and oversight. The Federal Supreme Court confirmed this in its Decision No. 121 of 2022, when interpreting the term "caretaker government," stating that the same ruling that applies to the Council of Ministers also applies to Parliament. Thus, the powers of both branches are extinguished upon the dissolution of Parliament (Adel, 2022, p. 9). If the constitutional provisions and the Federal Supreme Court's decision are consistent with normal circumstances, how can the state possibly cope with exceptional circumstances when the powers of both branches are simultaneously stripped away.

II. Exceptional Circumstances. The Council of Ministers may encounter exceptional circumstances that transform it into a caretaker government. To clarify the details of this and its relation to a state of emergency, we must address it in two separate sections as follows.

1. *Expiration of the Parliamentary Term.* Article 56 of the Iraq Constitution of 2005 stipulates that the term of the electoral term shall be four calendar years, commencing with its first session and ending at the end of the fourth year. Elections for the new Council of Representatives shall be held forty-five days before the end of the previous electoral term. It is clear from the constitutional timeframes regulating the life of the parliamentary term and its transfer to the new council that a constitutional vacuum would occur if the specified timeframes were not followed. This is especially true if the legislative elections are delayed beyond their scheduled date, particularly since the council loses its representative capacity forty-five days before the end of the parliamentary term. This is because the constitutional provisions regulating the work of the Council of Representatives do not indicate the possibility of the outgoing council continuing to perform its duties until the new council convenes. This has been confirmed by the court of the federal government, in its response regarding the possibility of council members retaining their representative capacity,¹¹ stated in this case, the council would become a caretaker government.

¹¹ The Federal Court Decision No. 39/Federal/2009 dated 13 May 2009. Available at: <https://www.iragfsc.ig> [Accessed 25.10.2024].

2. *Vacancy of the Prime Minister's Office.* The Iraq Constitution of 2005 stipulates that “the President of the Republic shall assume the duties of the Prime Minister in the event of a vacancy for any reason.¹² It is clear from this that the Iraqi legislature deviated from the characteristics of a parliamentary system when it transferred the powers of the Prime Minister to the President of the Republic during the period required to form a new Council of Ministers, based on Article 76 of the Constitution. Since the head of State is not responsible, how can he assume the coordinating role between the branches of government? (Al-Ani, 2007, p. 39; Shabar, 2013, p. 173).

In this regard, it is necessary to point out the relationship of the Prime Minister's position being vacant to the declaration of a state of emergency, since parliamentary oversight is a fundamental pillar for its declaration. Therefore, it cannot be declared during that period, because the President of the Republic has assumed the role of the Prime Minister, and thus parliamentary oversight is negated during the implementation of the state of emergency, because the President of the Republic is held accountable according to specific limited cases.¹³ Moreover, submitting the request to declare a state of emergency requires the approval of the President of the Republic and the Prime Minister. Accordingly, we find that the solution lies in amending the constitutional text so that the Deputy Prime Minister shall replace the President when the position is vacant.

IV. The State of Emergency: between Restriction and Necessity in a Caretaker Government

Undoubtedly, restricting a caretaker government to routine or on-going business, and excluding urgent and exceptional cases that necessitate declaring a state of emergency, is based on several justifications. However, this places the State in a difficult position between the constitutional and legal rules governing the declaration of a state of emergency and the necessity of addressing exceptional circumstances.

¹² Art. 81/First of the 2005 Iraq Constitution.

¹³ Art. 61/Sixth/B of the 2005 Iraq Constitution.

Therefore, a balance must be struck between the justifications for restriction and the necessity of declaring a state of emergency in a caretaker government. This requirement will be divided into two sections: the first will address the justifications for restricting a caretaker government's ability to declare a state of emergency, while the second will address the justifications for a caretaker government to declare a state of emergency.

IV.1. Justifications for Restricting a Caretaker Government from Declaring a State of Emergency

We conclude from the texts regulating the declaration of a state of emergency, and Federal Court Decision No. 121 of 2022, which includes an interpretation of daily matters, that the reason for excluding a state of emergency from the powers of a caretaker government is due to several justifications, including the following grounds.

1. The disruption of the principle of balance between the legislative and executive branches upon which the parliamentary system is based (Al-Tahrawi, 2008, p. 248; Al-Sayed, 2014, p. 25), the dissolution of the former or the expiration of its parliamentary term is a reason for the government to become a caretaker government. Therefore, it is impossible for it to be in a legally superior position to the legislative branch if it was granted the right to declare a state of emergency. Thus, the situation between the two branches must be similar; to the extent that the legislative branch is restricted in its constitutional powers, the executive branch must be similarly restricted.

2. The violation of the principle of the government's accountability to the legislative branch (Suleiman, 2010, p. 31; Shaber, 2012, p. 51). The situation that results in the government becoming a caretaker government due to the vacancy of the Prime Minister's position or a vote of no confidence is difficult to address with this, the government continues to rule without being accountable to the legislative authority. Therefore, the government's power must be limited to actions that do not incur political responsibility, confining them to the daily tasks required for the operation of public services.

3. The people are the source of authority, and members of the legislative authority are tasked with representing them. Therefore, it is impossible to allow a caretaker government to make critical decisions such as declaring a state of emergency before the people's representatives have expressed their views on a new, temporary way for society to function (Abdel-Mutaal, 2004, p. 357).

4. The absence of parliamentary oversight leads to the tyranny of the executive branch. It is impossible to grant it sufficient power to control without oversight in exceptional circumstances by declaring a state of emergency (Mahdi, 2017, p. 664). In other words, it is far removed from questioning and accountability, and out of respect for the people's representatives, its powers are restricted. This is what the Danish Constitution of 1953 adopted, as well as the Lebanese Constitution of 1926 (Ali, 2007, p. 338). It is worth noting that the Iraqi legislator limited the state of emergency to addressing exceptional circumstances, without providing a solution to the problem that prevents declaring a state of emergency when the government becomes a caretaker government. Therefore, it is necessary to address the justifications that give the latter the right to declare a state of emergency in order to avoid a constitutional vacuum in Iraqi legislation.

IV.2. Justifications for Declaring a State of Emergency in a Caretaker Government

Our aspiration for the Iraqi legislator is to include the state of emergency within the powers of a caretaker government, given its importance in addressing exceptional circumstances and resolving the constitutional vacuum during one of the legal and exceptional situations in which the government becomes in this state. The following justifications should be taken into consideration.

1. There is no need to restrict the government from declaring a state of emergency under the pretext of the balance between the two branches of government required in a parliamentary system. The legislative authority is in a better legal position than the executive authority when withdrawing confidence from the cabinet or when a resignation is submitted, and thus the argument for balance between them is negated.

2. The argument against granting a caretaker government the power to declare a state of emergency due to the absence of parliamentary oversight is invalid. Such oversight can be absent even with a regular government in place, as in case of postponed legislative sessions or the expiration of a legislative term. Furthermore, oversight becomes ineffective if the prime minister belongs to the parliamentary majority (Saeed, 2010, p. 54).

3. The representative character of members of the legislative authority is not lost with its dissolution or the expiration of its term, provided that appropriate mechanisms are adopted to approve the declaration of a state of emergency (through standing committees, the formation of the Federal Council, or a meeting of the legislative authority in cases of necessity). Thus, the people remain the source of power, and a caretaker government can declare a state of emergency after consulting with the people's representatives. Moreover, the government has not lost the confidence of Parliament, the people's representative body, and can therefore continue to exercise its powers, adhering to this principle. This is what some constitutions have adopted, including the German Constitution of 1949 (Badawi, 1971, p. 256).

4. Among the priorities of a caretaker government are the operation of public services and the maintenance of public order. This may not be achievable under laws designed for normal circumstances, thus necessitating the caretaker government declaring a state of emergency if it is the only option to preserve the safety of the State and its public order (Lauvaux, 1983, p. 330).

5. The concept of a caretaker government is not at all rigid, as it expands and contracts according to the circumstances the State is experiencing, especially exceptional ones that require protecting the State and preserving its public order (Al-Rifou, 2020, p. 138). This is what French jurisprudence has established, taking into account emergency situations that require immediate decisions, regardless of political and legal changes (Metwally, 1963, p. 226).

6. Given the need for continued administration and the management of daily affairs related to the public interest, the actions of a caretaker government are subject to the oversight of the administrative judiciary, but not to the political oversight exercised by the legislative

authority (Dyzenhaus, 2005, p. 65). This would be another means to address the absence of parliamentary oversight when a state of emergency is declared.

We conclude from the above that there are no justifiable reasons to exclude a state of emergency from the powers of a caretaker government, as the justifications for restricting the government's authority disappear when weighed against the justifications for the necessity of declaring a state of emergency.

V. Conclusion

1. The study showed that the Iraq Constitution of 2005 provides a legal framework for declaring a state of emergency, but it leaves some legal gaps regarding the caretaker government. The texts do not clearly define the limits of this government's powers in managing emergencies, which may lead to discrepancies in the understanding and application of procedures.

2. The results indicate that managing a state of emergency during a caretaker government faces significant practical challenges, including the lack of clear procedures for parliamentary oversight and the difficulty in distinguishing between the powers of the permanent government and the caretaker government that may weaken the efficiency of decision-making during the times of crisis.

3. It can be concluded that the current mechanisms for protecting fundamental rights during a state of emergency need strengthening, as some rights may be violated due to legislative ambiguity and the lack of clear provisions to ensure a balance between public security and citizens' freedoms.

4. The study highlights significant constitutional gaps concerning the legal duration of a state of emergency and the mechanisms for judicial and parliamentary oversight of the measures taken. This indicates the need for constitutional and legislative reforms to guarantee the protection of fundamental rights and prevent the government from exceeding its powers.

On the basis of the conclusions enumerated above the author formulates the following recommendations.

1. The study recommends that the powers granted to a caretaker government during a state of emergency be clearly defined and precisely formulated in the constitution or executive legislation to ensure there is no legal vacuum that could lead to disputes or misapplication of procedures.

2. The study recommends establishing effective oversight mechanisms by the parliament and the judiciary to ensure a balance between crisis management and the protection of citizens' fundamental rights, including monitoring exceptional decisions and verifying their legality.

3. The study recommends developing clear and practical plans and procedures for managing a state of emergency, encompassing security, administrative, and judicial aspects, so that the government can implement them quickly and efficiently while safeguarding fundamental rights.

4. The study recommends conducting comprehensive comparative studies with other countries' experiences in managing emergencies under a caretaker government to benefit from best practices of foreign States and avoid past mistakes.

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