

Legal Organization of the Accusation Against the Head of the Parliament

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Abstract. *One of the most important legal challenges is accusing the Head of Parliament, especially in light of the Republic of Iraq's 2005 Constitution. This fact results from the fact that, because it targets the accusing organization, it is the only constitution administered democratically. Internal regulations will be utilized to establish the legislative authority as he is the head of it, provided that they do not conflict with the provisions of the constitution. The study's goals of identifying, discussing, and resolving the most significant legal concerns in this case—drawing on the Iraqi constitution and the laws that attempt to call all matters relevant to the subject of accusation—thus highlight the study's significance. “especially in light of what the Iraqi constitutional legislator has neglected to address the questioning or dismissal of the Head of the Parliament and the reasons that require that....”.*

Keywords: *Accusation of the Head of the Parliament, Questioning of the Head of the Parliament, Responsibility of the Head of the Parliament.*

1. INTRODUCTION

The fact of accusing the head of the legislative authority has arisen for the public of legitimate life in Iraq after the contemporary problem that dominated the political and media spheres following the agencies taken by the Federal Supreme Court to dismiss the Head of the Parliament and end his membership in the sixth session of the Council of Representatives and its consequences debate that plays the role as a vital part in the engagements of the Iraqi legal field.

2. THE SIGNIFICANCE OF THE STUDY

The study stems from its significance due to the position of the Head of the Parliament under the Republic of Iraq's 2005 Constitution, which places him at the top of the legislative authority and the power granted to him under the provisions of the Constitution. The significance of the study lies in its scrutinizing of the extent of criminal responsibility in light of the constitutional immunity that he has been granted, as well as the boundaries of the Head of Parliament's responsibility by the Constitution and related laws. A description of its limitations and the Council President's responsibility restrictions in line with the Constitution's provisions and supplementary legislation is what makes it significant.

The Problem Of The Study

In light of constitutional immunity, the researcher aims to define the Head of the Parliament's criminal responsibility to establish the boundaries of criminal responsibility for the Head of the Parliament or his deputies. This is because, despite his constitutional legal status, he may be subject to a great deal of responsibility, which must be in line with the powers that are granted to him or that he enjoys as The Head of the Parliament, which organizes his responsibility.

3. THE METHODOLOGY OF THE STUDY

The researcher reviews his study by using the descriptive analytical method by the Republic of Iraq's 2005 Constitution, which helps to reveal the strengths and shortcomings related to the issue of the accusation directed at him, or the criminal responsibility in effect in our beloved Iraq in light of constitutional immunity. That means it exposes the advantages and disadvantages of the charge against him or the criminal responsibility that exists in the country according to constitutional protection.

4. DISCUSSION

The First Requirement: The Concept of the Accusation Directed at The Head of the Parliament

The concept of an accusation against the Head of the Parliament, which is used to establish the blame leveled against him, is not specifically defined. By establishing a precise definition that tackles this issue, the Constitution and its supplemental legislation failed to address the allegation problem. If we examine it carefully, we will discover that the immunity he was given relates to the accusation's issue. The immunity that was provided to him in accordance with the law must be revoked before the charge is directed against him. Only then is he questioned, as the legal rule did not address the realities of life as well as its social advancements and applicability to the times. Since the legislation is made up of several "discretionary" norms rather than "declarative," it is regarded as ink on paper, and the Iraqi legislator's effort in creating it was in vain. Instead, it would have been wiser for it to keep track of and order life's facts.

Due to the seriousness of the tasks assigned to the Head of the Parliament's authority and granted to him, the Iraqi legislators failed to address the provisions about the criminal responsibility of the Speaker of the Iraqi Council of Representatives and failed to provide the necessary privacy, which was required for the legislators to clarify and detail its circumstances.

We saw that this matter was not being addressed constitutionally under legal article (63) of the 2005 Constitution and that the criminal legislator was left to handle the specifics as soon as feasible. We will split this need into two branches based on the aforementioned. The linguistic and technical definition of questioning the Head of Parliament will be covered in the first branch, and the topic of firing him by the current constitution will be covered in the second.

First, The Definition of Questioning the Speaker of the House of Representatives

In terms of language and technicality: Linguistically speaking, responsibility is the conduct that must be carried out, including the Almighty's adage, (And fulfill the covenant the covenant will be questioned about)³, and it is also defined as being derived from the verb "to ask," which means to ask and to question. Although its technical definition is holding someone accountable for the consequences of his actions that violate the law⁴. It can also be thought of generally as a state or characteristic of someone who is asked about a matter whose consequences fall on him⁵, and accountability is its equivalent. The Holy Quran has multiple references to this phrase, including the Almighty's statement: (And stop them, for they will be questioned)⁶.

"The person's bearing of the consequences of his obligations, choices, and decisions" is one definition of responsibility. Legal jurisprudence has defined accountability as "the monitoring and accountability of the person entrusted with political authority for breaching his obligations, regardless of their source, whether constitutional, legal, principles of natural law or rules of justice, which would endanger the interests of the country, which would result in the person's dismissal, provided that the monitoring is by the original authority holder or his representative."⁷ This definition contrasts with the few definitions that have clarified the concept and the fact that the law has not established a specific definition.

As such, it can also be described as "a person's natural ability to understand and distinguish the meaning of his actions and to act in accordance with this understanding or distinction."⁸ Additionally, it refers to "a personal legal qualification that requires attributing an act or work to an individual who is qualified to bear the consequences."⁹

If this indicates something, it is that there is no clear definition of criminal responsibility. An employee may be fired from their job if they are found guilty of high treason, perjury, bribery, felonies, or misdemeanors. It entails accountability, and if the duties outlined in the constitution's articles are upheld, responsibility can be raised and started. Accountability is carried out in front of the party designated by the legislator, and it is clearly likely to have an impact on national affairs.

As a result, it can be defined as "an obligation by which the Head and the member of the Parliament bears the consequences of his legally criminalized act, or bears the legal consequences arising from his illegal acts and bears criminal responsibility for them."

It is clear to us that the Iraqi legislator did not address the provisions related to the criminal liability of the President or member of the Parliament by giving this matter sufficient importance due to its seriousness, so the procedures are limited to the constitutional texts, specifically the text of the legal article (63) of the Constitution of the Republic of Iraq in 2005¹¹, leaving many important details that were supposed to be at least addressed, or to provide immediate solutions for the Iraqi criminal legislator, despite that and until now he has not enacted a law in which the cases specific to the criminal accountability of a member of the Parliament are stated, so resorting to the general provisions contained in the Iraqi Penal Law No. (111) of 1969 as amended, and also resorting in the event of committing criminal crimes to the Law of Criminal Procedure No. (23) of 1971 as amended¹², and through what we have indicated above regarding the definition of criminal liability, we will explain the characteristics of this liability.

Second: Dismissal of the Head of the Parliament.

One of the members of the Council's Presidency is Head of the Parliament and according to the Examining the text of the legal article (12/Second) of the Internal Regulations of the Parliament closely reveals that it deals with the dismissal issue. The problem of dismissing the Head of the Parliament was not addressed by the current constitution, which left it up to other laws. Scrutinizing the text of the aforementioned article, we discover that it failed to make clear the circumstances that call for dismissal, whether or not the majority was reached.

According to the legal article (1/Second) of the modified law on replacing the Parliament's members, the President may be removed upon a well-reasoned request by one-third of the Parliament's members, following which the dismissal must be approved by the absolute majority of members. What is taken from the Iraqi legislator is that he was content with stating the election procedure and obtaining an absolute majority of the number of members, but he did not include the reasons and subjects that call for the dismissal of the Head of the Parliament in the constitution or laws that supplement the work of the legislative authority. These issues need to be handled as though we were assuming that since this is accusation and functional carelessness in the public interest so that the Head of the Parliament refused his work politically.

As mentioned above, the topic of termination is not clearly stated and addressed, nor are the grounds for termination and the associated procedures clarified. Since this is a legislative deficit that needs to be examined in order to prevent its legal and political repercussions, we thus urge the Iraqi legislator to remedy this deficiency and current shortcoming.

The Second Requirement: The Criminal Responsibility Directed at The Head of the Parliament

Most constitutions have been eager to include guarantees that ensure freedom and settlement when performing parliamentary duties in order to achieve basic parliamentary independence and ensure the continuation of the work of the Iraqi Parliament in accordance with what is available to it under the provisions of the Constitution, the Parliament's internal regulations, and other complementary laws. "Parliamentary immunity" is among the most significant constitutional protections that represent independence and stability.

Since immunity shields the legislative branch from outside aggression, it is seen as an exception to the general rule. However, the immunity granted to members of the Parliaments under the statute's language is procedural and regulatory in nature rather than absolute, meaning that the representative is above the law. This requirement will be split into two branches based on the information above. The nature of parliamentary immunity will be reviewed in the first branch, and the Federal Supreme Court's decision will be discussed in the second.

First: The Nature of Parliamentary Immunity:

Parliamentary immunity, which has been defined reformally despite the limited definitions aimed at it, is of great importance in modern constitutional systems in general and in the Iraqi constitutional system in particular. It is defined as "the impermissibility of taking any criminal measures against any member of parliament except after obtaining prior permission from the council if it is in session¹⁵, and obtaining permission from the president of the council is sufficient if there is a holiday"¹⁶.

According to the legal article (63/Second)¹⁷ of the Constitution of the Republic of Iraq in 2005 and the legal article (20) of the internal regulations of the Parliament¹⁸, the parliamentary form in Iraq specifically does not grant the benefit of parliamentary immunity to anyone other than members. This is also referred to as "an exception to the rule of equality under which the representative enjoys absolute impunity for the opinions and ideas he expresses while performing his parliamentary duties during his session, and no legal action shall be taken against him except in accordance with what is stipulated by law"¹⁹.

According to the definition given above, immunity is "a legal system granted to the representative under the provisions of the law and the constitution, aiming to achieve the public interest and provide protection for him, and he is not questioned except after the availability of certain conditions in the case of procedural immunity." This is what the Iraqi Parliament stressed when it voted on some significant changes to the Iraqi Penal Law No. 111 of 1969, as amended, which went into effect on the day of the vote in the Iraqi Parliament in 2024. The amendments addressed an important issue, which is:

- The Parliament's member is immune from prosecution for any thoughts he speaks during the session.
- During the parliamentary term, a representative cannot be arrested unless he is directly involved in a crime or is suspected of a crime and the Parliament grants permission to lift his immunity by an absolute majority.
- During the parliamentary term, a representative cannot be arrested unless he is directly involved in a crime or is accused of a crime and the president has granted permission to lift his immunity.
- Arresting a member of the Parliament or taking criminal action against him is prohibited in all situations except those listed above, unless the Head of the Parliament and his two deputies have given their consent.

However, in accordance with the legal article 331 of the Iraqi Penal Law, the Presidency of the Baghdad/the main Court of Qarh, which specializes in evaluating integrity cases, decided in Case No. 52/C/2024 against the representative Hadi Hassan Marhi Al-Salami on 3/5/2024, sentencing him to six months in prison and a fine of one million Iraqi dinars. The court's decision was based solely on the accusation article (3) and did not address the council or lift immunity.²¹

Second: The Head of the Parliament's Criminal Responsibility and Its Characteristics

As mentioned earlier, if we closely examine the text of the legal article (63/Third/A) of the Iraqi Constitution, we find that it affirms that the immunity granted to the Head of the Parliament is restricted to the ideas and opinions that the President expresses both inside and outside the Council. If the President is attacked by any member or person present for voicing his opinions, he will be held criminally responsible for his actions.²²

According to the aforementioned, the legal article (b/c) addressed the possibility of bringing additional criminal procedures against the Head of the Parliament in the event that he commits a crime. Additionally, the legal article text explicitly confirms the need to obtain the Parliament's approval in the event that he is arrested. Additionally, the legal article text

excludes the case of arrest in the event that he is caught red-handed in a felony, and the constitutional text confirms that the crime should be classified as a felony.

"His obligation to bear all legal consequences arising from a criminally unlawful act" is the definition of criminal culpability, which can have an objective, spatial, or temporal scope. After closely examining the Parliament's internal regulations, it is impossible to find any solutions for this problem because the Iraqi legislator had failed to organize the Head of the Parliament's accountability and the actual remedies for it. As a result, we had to refer to the application of the general texts found in the Code of Criminal Procedure and the Penal Law. The first step in accountability is to file a complaint against the Head of the Parliament, either by a member or by the person who filed the criminal charge or by the Public Prosecution, and then the competent court refers the complaint request to the competent court to lift his immunity, and after obtaining approval, full responsibility is raised against him.

Although this accountability was not specified in the Parliament's internal regulations, it is an absent issue and cannot be brought up because there is no text that specifies it, with the exception of what is referred to as "illegal gain."

The Federal Court also cited the text of the legal article (52/First and Second) of the Iraqi Constitution in 2005, which stated that: "The Parliament shall decide on the validity of the membership of its members within thirty days from the date of registering the objection, by a two-thirds majority of its members." This is the Federal Supreme Court's stance on this accountability, as per its decision No. 9/Federal/2023, which stipulated the termination of the President's membership. Within 30 days of the Parliament's decision being issued, an appeal may be filed with the Federal Supreme Court.

However, the legal article (93) of the Constitution specifies the Federal Supreme Court's jurisdiction, and the legal article (52) is explicit and clear. It is nearly impossible for an appeal to be filed without first being submitted to Parliament, which is how the court considers and no other article. The Federal Court's task in this case is limited to the text of the legal article (93), which may also be the fundamental principle and the conclusion reached by the Federal Court. This Supreme Court also indicated in its ruling its vision of the legislative authority and added the attribute of sanctity to it, as it is the institution through which nations rise, and it confirmed that "peoples view the legislative authority with sanctity and respect for the ability, potential and powers that this legislative institution has", and the principle is that oversight of the constitutionality of laws and the principle is that oversight of the constitutionality of laws and constitutional disputes is within the framework of the constitution and not outside it.

The Head of the Parliament's criminal liability is governed by a number of specific principles that reflect its unique features. Unless the act attributed to him is illegal, the President cannot be held accountable for it. We are all well aware that the President cannot be made a criminal, unless a specialized legal body issues a ruling. Therefore, the principle of proportionality between the act committed and the penalty stipulated in the case of responsibility must be applied, as well as the principle of equality between them and persons.²⁴

The duties that the President performs are comparable to those of the Head of State or the Prime Minister. For this reason, it is necessary to shed light on the principles governing the criminal liability of a member of the Parliament, and it is as following:

A. The legitimacy of responsibility principle:

This responsibility cannot be established if the attributed actions do not amount to a crime; instead, it must be in explicit and unambiguous texts that are subject to this principle, which is governed by the legal rule "no crime and no punishment except by text." This principle is the foundation of all criminal law.

"There is no crime or punishment except by law, and there is no punishment except for the act that the law considers to be the case at the time the crime was committed," according to the legal article (19/2) of the 2005 Iraqi Constitution. It is forbidden to impose a penalty that is worse than the one that was in place at the time the offense was committed. According to the article's wording, which is regarded as the result of a fight against injustice and tyranny when evaluating culpability, no punishment may be applied other than by the law.²⁶

The legal article (1) of the Iraqi Penal Law No. 111 of 1969, as amended²⁷, states that "there shall be no punishment for an act or omission except on the basis of a law that stipulates its criminalization at the time of its commission, and no penalties or precautionary measures may be imposed that are not stipulated by law." However, the text also states that the principle of legality encompasses both criminalization and punishment, meaning that these penalties cannot be expected unless they are based on proof of the perpetrator's responsibility in accordance with the law.

B. The personal responsibility principle

states that criminal responsibility is attributed to the Head of the Parliament or any member of Parliament, i.e., the criminal act's perpetrator, and does not extend to other people unless they were co-conspirators or partners in the crime. Those who commit criminal errors are held legally accountable for their actions.

The concept of judicial punishment is in effect when the judiciary issues a decision, such as a criminal court ruling, that considers the specificity of the criminal accountability brought against the president and members. This principle is based on the provisions of the Iraqi constitution, which has demonstrated to us the legal process for filing a criminal lawsuit, how to increase the president's responsibility and its extent.

Considering the aforementioned, this concept affirms that criminal liability may only be imposed through a court decision against him, and that his trial must take place before the appropriate court that determines his liability based on the court decision.

C. The concept of judicial punishment

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Considering the aforementioned, this concept affirms that criminal liability may only be imposed through a court decision against him, and that his trial must take place before the appropriate court that determines his liability based on the court decision.

The Third Prerequisite: Comment on Federal Supreme Court Decision No. 9/Federal/2023

In terminating the plaintiff and defendant's membership, the court based its decision on the fundamental principle that their actions constituted a violation of the constitutional oath and its obligations, particularly those outlined in the legal article (50), which also included the wording of the oath that a member of the Iraqi Parliament must take. These are all constitutional obligations that a member of the Parliament must uphold; if he does not, he will be deemed to have broken his oath-confirmed pledge. The constitutional legislator did not, however, impose any sanctions for this infraction. Is it a criminal penalty that entails lifting the representative's immunity and putting him through a criminal trial, and if so, who has the right to hold such trial? Or is it a political consequence that involves terminating the representative's membership?

It is clear that the Head of the Parliament takes the same oath as required by the legal article (50) of the Constitution. This is because the legal article (61/Sixth) of the Constitution specifies that the President of the Republic may be questioned or removed by an absolute majority of the Parliament following his conviction by the Federal Supreme Court in three cases: perjury, violation of the Constitution, and high treason. The Constitution did not specify

the nature of these cases or their description, which calls for the accusation of the person responsible, as perjury is a breach of the covenant confirmed by the oath taken by the Head of the Parliament or anyone who took this oath, whether from the members of the legislative or executive authority, and the Constitution did not include any penalty for breaching it, while the legal article (2) text (4) of the Constitution of the United States of America, for example, stipulated the removal of the President, Vice President and all official civil employees of the United States of America from their positions if they were charged by a parliamentary commission with treason, bribery or any major misdemeanors and crimes for which they were convicted, in addition to the deprivation of holding and occupying any other position in the government that requires honor and trust as a supplementary penalty.

The Republic of Iraq's Constitution contains no comparable or identical language that holds the leader of the legislative or executive branch and its members equally responsible. This leads us to conclude that the Federal Supreme Court's option to use political punishment in its decision to revoke membership stems in part from the constitutional text's silence regarding the penalty for perjury for members of the legislative authority. We can infer this from the decision's reasoning, which read as follows: "...because the plaintiff is no longer a representative by accepting the resignation on May 7, 2022, and it is definitely not acceptable to accept his resignation again on January 15, 2023, and that this constitutes the use of parliamentary powers that is completely contrary to the constitution and the law. As such, the Constitution of the Republic of Iraq stated that, in accordance with what was stated in the lawful article (50) of the Constitution, the restriction on the content of the right, which is to perform parliamentary duties and responsibilities honestly, and regardless of what the Constitution has drawn up in the legal article (52) therefore, the penalty imposed for violating the provisions of the legal article (50) of the Constitution is the disqualification of the representative from continuing in membership. This is because, in the event that violating the oath to God Almighty does not result in the termination of membership, the existence of that article becomes null and void in the Constitution, which cannot be said legally or constitutionally. ...)

As a result, the Head of the Parliament's violation of the oath-bearing covenant is the primary cause of membership termination, and the punishment for this violation is membership cancellation without the ability to assume additional duties. The constitutional legislator is above the wording of the legal article (50), which would become void otherwise. Regarding the offense of falsifying the resignation date, the court could, upon establishing this occurrence, send him to the appropriate legal body to pursue criminal charges for this deception following the final decision terminating the membership. Because it addressed the legislative omission

of the constitutional legislator in determining the penalty for breaking the oath for those who take it, the Federal Supreme Court's decision is regarded as one of the constructive (established) interpretative decisions. This is because it rebuilt and reformed the constitutional text by adding the neglected rule, making it effective and consistent with its goals.

In applying the text of the legal article (93/Sixth) of the constitution, which gave the court the jurisdiction to adjudicate the accusations directed at the Head of the Parliament, the Prime Minister, and the ministers, and that this would be regulated by law, we had hoped that the Federal Supreme Court would include in its ruling a lawful text directing the legislative authority to enact a law that includes holding the heads of the legislative and executive bodies and their members accountable for cases of perjury and violation of the constitution. Additionally, the public wish that the court would address the legislative omission in certain provisions regulating the resignation of a member of the Parliament by his free will.

According to the Parliament and its formations law No. (13) of 2018, the court confirmed in its ruling that it dealt with cases of termination of membership. The third clause stated that representation in the council is terminated in a number of cases, including: evidence of the Head of the Parliament having repeatedly and seriously violated the provisions of the legal articles (5, 6, 14, 17, 20, 39, and 50) of the constitution and the legal article (10/seventh) of the law of the Parliament, which emphasizes "preserving respect and prestige for the council and the constitutional institutions of the state, with that parliament serving as the legislative body chosen by the populace to represent their wishes and directions."³³

By reconstructing and forming the constitutional text and adding the neglected rule to make it effective and consistent with its goals, the Federal Supreme Court's decision is regarded as one of the constructive (established) interpretative decisions because it addressed the legislative omission of the constitutional legislator in determining the penalty for breaking the oath for those who take it via the interpretation of the legal article (50) of the Constitution.

Therefore, the interpretation in this case concentrated on what the constitution did not include, namely the penalty, rather than the text itself. The Federal Supreme Court went beyond just pointing out the constitutional text's omission; instead, it construed it in a way that fulfilled the purpose for which the constitutional legislator drafted it and then used it to settle the dispute.

5. CONCLUSION

As a result, one has come to several conclusions and recommendations after finishing the statement of the issue of the legal organization of the charge aimed at the Head of the Iraqi Parliament, which may be summed up as follows:

First. The Results:

1. According to the Iraqi Constitution, the Parliament's internal regulations, the Law of the Parliament and its formations, and the Law of Replacing Members of the Parliament, all omitted the definition of a member of the Parliament, even though the statement of requirements for candidates was mentioned. So, there is no specific definition of all mentioned above according to the law of the Iraqi Constitution.
2. There was no separate statute that addressed the issues pertaining to the criminal culpability of members of the Parliament; instead, the general principles were used to decide the extent of this liability and how serious it was.
3. On see that the legal article (12/Second) of the Iraqi Parliament's internal regulations grants the Council the power to remove any member of the Presidency, but it did not make clear to us the circumstances in which this can happen or what the guarantees are, which is regarded as a legislative flaw.
4. The legal article 63/Second/C in 2005 of the Iraqi Constitution, which deals with lifting parliamentary immunity, stated that it would be done so with the consent of the absolute majority of the Parliament if a felony was committed during the legislative session. However, it did not provide any clarification outside of the legislative session.

Second. Recommendations:

1. In order to prevent the Head of the Parliament from using tyranny and arbitrary power, the Iraqi constitutional legislator should adopt the constitutional approach used in many Arab and foreign nations that expressly acknowledged the political responsibility of the Head of the Parliament or the President of the Republic.
2. In light of this significant issue, we recommend Iraqi lawmakers to amend the constitution to include language addressing the Head of the Parliament's alleged violation of the constitutional oath, much like has been done with regard to the President of the Republic.
3. We recommend going over the content of the legal article (63/Second/B, C) of the 2005 Iraqi Constitution.
4. In accordance with the equality principle, we recommend the Iraqi constitutional lawmaker to draft a clause that would require members of the Parliament to waive their procedural immunity during the legislative recess.

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