International Journal of Innovation, Creativity and Change. www.ijicc.net
Volume 12, Issue 7, 2020

Parliament Auto-Control on Legislative Work

Mohammad Taha Hussein AL-Husseini[a], [a]Dean of the College of Law & Political Science Al-Kufa University –Iraq, Email: [a]mtahaha@yahoo.com

Auto-control is not limited to management only, but rather includes other public bodies in the country, including Parliament. It has the power to impose its control on its legislative works. There are two types of constitutional regulation for this oversight: one type that engages another side with Parliament in monitoring its legislative works, and another that limits control to the Parliament itself.

Keywords: *Auto-control, Parliament, Legislative works, the two legislative councils, the constitution, the parliament president, Legitimacy*

Introduction

The Parliament imposes its auto-control on the field of legitimacy, what we are concerned with here is the auto-control on its works, which means its control on the legitimacy principle. As most of its work is the legislative work, we shall make this research limited to it.

There are two regulations in this field. The first one does not forbid another side from imposing its control on the constitutional laws even with giving the Parliament this right, in contrast with the other regulation which straitens the constitutional control on the laws with the Parliament itself.

From here we will divide the research into two topics: the first is for studying being the Parliament not alone in monitoring its work of legislation, and we study in the other one the state of being alone in this.

The Research Problem

The research questions addressed in this study are presented as follows.
Is the Parliament alone in imposing its control on its legislative work? Or there is another party which participate with it? And how is this control with regard to the Parliament consisting of two legislative councils? And can the Parliament be alone in this control on its

works? Since the Parliament is a large assembly, there must be another party that exercises this control, so who is this party? And what are the characteristics of the alone in decisions and control on its legislative works? And does this control have defects?

The Research Scope and Methodology

More than one general assembly can practice control on the Parliament works, such as the judiciary, the executive authority and the Parliament itself. We will be limited here with the control that the parliament practice on its works excluded the judicial oversight on it and also the executive authority.

In this research, we used two approaches, the analytic and the descriptive one. In addition to the structural approach when the need arises.

The Plan of the Research

We will divide our research in studying the auto-control of the Parliament on its works into two topics: In the first one, we will study, not to be alone in control on its legislative works, and the second is the Parliament to be alone on its control on its legislative works.

Not Being Alone in Monitoring its Work of Legislation

This oversight is evident in the legislative councils. In this system, one of the two councils can impose its control on the legislative work which referred to it by the other council. This control does not prevent the judiciary from the control of its constitutionality. It is worth noting that such oversight explored from the constitutional texts because there is often no explicit text on them. Whereas, the apparent emergence of it in the two legislative councils system is appropriate for us to study here the emergence of this system, and then we discuss the method of self-monitoring of Parliament in this system briefly.

The Two Councils Emergence

The King in Great Britain collected in his hands all the authorities and powers, without being shared by any other authority (Al-shukri, 2012). The restricted royal system (or constitutionality) had not yet come into existence at this stage, where the system of absolute royal prevailed during the Middle Ages. Nevertheless, the state gradually progressed to the democratic parliamentary system, in successive but not easy steps. It also did not materialise in a short period, and it came as a result of long-suffering.

The people were shaken under the weight of absolute rule. This led the people to take the path of revolutions and uprisings to restrict the King's absolute powers. It is striking that the interests of the people and the nobility were meeting in such revolutions and uprisings, and the nobility were the leaders themselves.

Among the most crucial evidence for this, is the first document that was issued in Great Britain to restrict the King's authorities, which it is the Great Testament Document (Magna Carta), which came as a result for the successful revolution led by the nobles and the participation of people against the King (John Sans terry) in 12155 (AL-Mashhadani, 2007).

When the parliamentary system appeared in Britain through the presence of both councils of Parliament, they are the (House of Lords). The one which represents the upper class in society, that is, the noble class, which it is various within the council, including hereditary lords and the lords of the Anglican Church, which is the official church in the state. The King may also appoint persons in the House of Lords in appreciation of their efforts in the service of the state after a proposal submitted by the Prime Minister(Al-Ani, 2007).

Its establishment dates back to the Grand Council, which was consulted by the King on various matters of government, including the issue of taxation. It consisted of the nobles, clergymen and the landowners. The King shall determine the number of his personnel and the manner of his formation. Then his specialisation will be expanded, especially in the period following England's submission to the Norman authority.

This expansion came in the legislative and judicial areas. There was another expansion in his terms of reference, and after the issuance of the covenant document (Magna Carta) which issued by the King (Jean Sans terry) in 1215, new powers were added to it. This document was announced in the aftermath of the revolution that patricians and clergymen announced after his rule threatened their interests. Therefore, they rebelled against his authority and published regulations that included their topics. They did not return to obedience until after the King agreed to recognise them with the rights contained in their list.

The document included a number of articles related to the rights of the feudal lords and the maintenance of their property from the King's infringements, in addition to securing the freedom of the Church to choose its leaders, and commitment to integrity and justice in the administration and the judiciary, also guaranteeing the personal freedom of the members of the aristocracy. The document also stipulated that the King recognises the Parliament's right to approve taxation and to submit petitions and proposals to it. Hence, this council became involved in setting the laws as well as imposing taxation and forming the first image of the British Parliament (AL-Mashhadani, 2008).

The House of Representatives is the second council of the two British parliament Councils. It consists of members elected by direct universal suffrage. They represent the general British people. Also, the government or the ministry emanates from it too and not from the House of Lords. And the council tenure was four years; however, it became five years after 1911 (AL-Ani, 2010). The formation of the (House of Commons) is a continuation of the introduction of the two legislative councils. Its appearance dates back to the era of King Henry III, as he wanted to involve provinces and cities in the works of the Grand Council (House of Lords). Therefore, he invited two elected horsemen for each province, and two elected horsemen for each important British city to join them to the Grand Council.

The members of the Grand Council viewed these newcomers as common people, who were inferior to them. This condescending view led to the refusal of nobles and the clergymen to hold their meetings with the participation of the new members. From the result of this refusal, the council was divided into two separate councils, the first is the (House Of Lords), and the other is the (House Of Commons) 1261.

In 1351, each of them was assigned a place to meet, and they began in (1377) to elect a president for them. It was decided to that the two councils (House of Lords & Commons) shall be equal in competence and that decisions shall be issued by the majority of each of them (Hafidh, 1999) this was the beginning of the two councils.

The United States of America has influenced by this regime, It is, and if it was liberated from British colonialism and its presence in it, it was not freed from its influence on it.

It differed from it in that the emergence of the two councils system in Britain was driven by historical events and the ruler's need to impose more control, and weakening the council that arose earlier. As for its establishment in the United States of America, it is a legislative one, and its constitution is the first written constitution that is formally adopted by the two councils system. In its first article, it stipulated that "all legislative powers conferred here on the United States Congress shall be composed of the Senate and the House of Representatives."

Since the life of man, societies and states are based on permanent movement and development, it is natural that this system takes a new direction different from what was the reason for its inception. Hence, the representation of each council of them changed, they made one of them represents the people in general, and it is often expressed in the lower one. The second represents the provinces under the one-state banner (AL-Husseini, 2016).
This indicates that this system was designed to accommodate the country that adopts the federal system, not the simple state.

The Control of the One of the Councils on the Second Council Legislative Work

The most constitutions often seek to make a balance between the two legislative councils, but taking into consideration the merits of each of them. It may grant some of them legislative specialisations on specific subjects and deprive the other of them. However, what deprives it of being is to grant it some legislative oversight. For example, the United States of America granted the Parliament the exclusive right in the financial legislative. It alone has the right to prepare financial bills, and the Senate has no initiative to the same. It has the right to monitor the laws prepared by the Council of Representatives. It also has the right to propose specific amendments to it, and this activity of the Senate enters into the Parliament's self-monitoring of its legislative work.

But if the two councils are equal in their legislative competence in a matter, then mutual control between them appears. The council that approved the draft law, whether it is the initiator of a proposal and preparing its draft, or received it from the executive authority, in both cases, it has to raise it to the other council. Here comes the role of the council in controlling legislative work, and it also has the right to accept it and read it if it is convinced of it. It may also reject it or return it to the council that sent to it with a request to amend it or amend some of it.

The American Constitution is the race to this organisation among the written constitutions. It stipulated that all bills for collecting income are presented in the House of Representative, but the Senate can propose or agree to amendments (The American Constitution, 1787). This oversight can also be represented in what is organised by the Iraqi Basic Law (1925) which obligated to raise the law after one of the two councils approved it, to the other council. For example, if a draft law providing the executive authority is presented to the Parliament, this council will take the measures stipulated in its bylaw.

After it finishes it, the council voted in the law, either he rejects it. In this case, he does not submit it to the Senate, or he votes on it with approval, and in this case, he must submit it to the Senate, and the Senate has the option to reject or request the amendment or accept it. And being rejected by the Senate means that he returns it the Parliament.

If the Parliament insisted on the law, he returns it to the Senate, and if the Senate accepted it this time. It will be raised to the King to approve on it. However, if the law was rejected for the second time, the procedure mentioned in the article 63 of the Basic Law and will be taken, and the summary of this procedure shall be implemented as follows.

In this case, a joint session is held between the two councils. The Speaker of the council of the Representative determines "the date of the joint session to study on these regulations"

(AL-Bayati, 1991). A joint session will be held between the Senate and the House of Representative, headed by the Speaker of the Senate (AL-Saidi, 1990) and provided that the venue for this conference is the seat of the House of Representative (Abdalrazaq,1997). It seems that the legislator tried to achieve a way towards a balance between the two councils, as he granted the Speaker of the Senate the right to preside over this session and made the venue of the meeting the seat of the House of Representative.

This session is devoted to discussing the material in which the difference occurred, without any discussion of any other material. The aim of this joint meeting is to reach an agreement between the two councils on the content of the disagreements over it in an attempt to save the bill from collapsing.

After the discussion ends, the project is presented for voting at the same session, and by the members of both councils, In order for the project to be considered acceptable to both councils, it must obtain two-thirds of the votes of the members of the joint council,

Whether the amended articles were voted on or the unmodified articles were voted, in which case the financial bill would be submitted to the King for authentication. If the bill does not obtain two-thirds of the votes of the joint council, it is considered rejected by the Parliament, and it is not permissible for the cabinet to submit this same bill to the Parliament a second time during the duration of the meeting or (in the meeting itself).

Parliament is Alone In the Control of Its Legislative Work

Some Constitutions granted the control on the parliamentary legislative work for the Parliament itself clearly and frankly. However, they differed in terms of the parliamentary authority granted by this authority or jurisdiction in controlling legislative works. Some of it granted to the president of the Parliament, others to the Parliament itself.

With this difference in the distribution of regularity jurisdiction, however, it restricted him to the legislative authority without the participation of another authority in it, and for this, we need to know his justifications.

The Authority Responsible For Overseeing the Parliament Works

Some Constitutions sought to limit control over the works of the legislative works for the Parliament with its president. The most prominent example of this kind of Parliament, the former Soviet Union Constitution (1977), and some constitutions granted this jurisdiction to Parliament and did not limit it to its president. The constitution that has the lead in this organisation may be the eight-year constitution of the French Revolution. Rather, it is the first

constitution of the primacy of constitutional rules and that the law must not be violated. So it imposed the control over its constitutionality, the constitutions that preceded this issue were not regulated, preceded by the existence of the first two constitutions, the first is the English one which is a subject to the principle of supremacy because it is a customary constitution and the customary constitutions are flexible ones. Therefore, the Parliament issues a law that violates the constitution or some of its rules. It is considered an amendment to the constitutional rule that it violated. The English constitution does not enjoy any form of supremacy, neither objective nor highness. Thus, it is outside the specialty of being granted the rule of the constitutionality of laws.

The second constitution is the United States of America constitution, although it is written and static constitution in that one. It did not look at the issue of the constitutionality of laws and did not regulate them as for the Supreme Court's oversight of it. It is an accident that the constitution had not yet declared and will be discussed later. The French written constitutions came after the English and the American constitutions. It was taken for the first time in the constitutional era or, let us say, in the era of constitutions written in the principle of supremacy and the clear control over the constitutionality of laws.

In summary, the introduction of the principle of superiority and control over the constitutionality of laws is essential and represents a qualitative shift in the human idea in this field. But the question is, why did the constitutional legislator make such an arrangement? Examining the constitutionality of a law and examining whether or not it violates the constitution is tantamount to contest the law and repealing it when the violation is proven to be the ruling issued for its direction, It is known that such an issue is pasting the work and the nature of the judiciary from the work of the legislative institution and its nature, so why did the French constitution assign this competence to Parliament without the judiciary? The reason could be one of the following:

The First Probability

This probability is due to a historical issue that accompanied the French revolutionaries.

What matters to us here is the judicial scene. What can be distinguished from another case related to it differs from the general scene in which the judiciary appeared as a representative of the King in resolving various disputes, and this special scene of the courts, which were called Parliament (French Parlements, 1905). It was crystallised with what the authority was aspiring to and obtaining its various privileges.
This ambition has grown, especially after the death of King Louis XIV, where the authority suffered from apparent weakness in its various joints. This led the courts to object boldly to the King's authority, and the opposition concentrated on the legislative side of his powers.

These courts were practising a law-related job, while the law was issued by the King. The courts register in their official records, and its registration in the court records is considered for publication, as the official gazette had not been known and established in those times.

Courts have used their right to register laws to enter into force as a means of opposing the King. It was constructing its publication and then applying it, especially if those laws affected the positions of influence of court judges (Ali Jawad, 1992). It refrains from publishing when dislike it, claiming that it has the right to alert the King and refuse to register.

Courts were not satisfied with interfering with the legislative affairs of the state. They extended their hand to the administrative position as well, especially after organising administration by France, in the early eighteenth century, basing on new and modern grounds to replace the old system of public officials in the country. There was a great feeling that the new staff would have a significant impact on the feudal system over the entire French territory. So the parties that bear the brunt of their work have begun to seek affirmative action for them, including courts' judges.

These courts decide not only on disputes arising from administrative actions but also they interfered with the work of the administration directly and then exercised some of the directing them and issued orders and prohibitions. These courts may suspend administrative activities, and the resistance of the higher courts to administration reached its climax in the period during the reign of King Louis XV aimed to make board reforms in the country that the general French people desperately wanted. However, the courts felt anxious and afraid of these reforms because they would affect the privileges of their judges, and so they stood against those opposing them and were able to prevent their realisation (Fudeel & Dilvo, 2008)

It is understood that the laws as abstract general rules regulating the behaviour of individuals within a state have great importance in the lives of peoples. Indeed, its abstraction is an abstraction to the interests of individuals and peoples in general,

The administration also seeks to achieve a strategic goal of achieving public benefit. Whenever the administration's work is hindered, this means stopping the realisation of the public benefit of society. Not to mention the psychological state and the extreme frustration with which the French people were suffering because the administration was unable to carry out the reforms that it intended to achieve.

This is due to the court's refusal to undertake these reforms. All of this led to the people's hatred of these courts, and this hatred was reflected in the men of the French Revolution, as they were carrying the worst memories of the courts of the Old Testament, that is, the courts

before the French Revolution in 1789. This is the one that explains the violent reaction to its validity in exchange for administration, and in exchange for Parliament as well.

Although, after the success of their revolution, the men of the French Revolution created new courts to replace the old ones (that is, to replace the Old Testament courts), the mistrust that these revolutions held on the new courts will not restore the principals of the old courts in seeking to control the authority and administration, and it misbehaves as its predecessor did. This was one of the reasons the revolution adopted the principle of separation of powers as a successful alternative to the principle of concentration of powers, which led to oppression, repression, injustice and tyranny.

The men of the French Revolution interpreted the principle of separation of powers with a special interpretation to achieve what they aspire to from the court's dimensions for interfering in public administration affairs. They believed that one of the keys of the courts' interference in the administration's work was the consideration of its dispute. Therefore, the revolutionaries claimed that subjecting the administration in its claims and disputes, or rather, submitting cases and disputes of an administrative nature to the ordinary court which leads to wasting the independence of the administration towards the judiciary. This leads to disruptions in administrative life. Therefore, it was only natural that this vision should prevent the courts from considering disputes of an administrative nature, and for achieving this vision, the men of the revolution represented the law (16-24) August 1970. This may be the same reason that promoted the revolutionaries to distance the courts from the administration's actions, is the same one who pushed them away from Parliament. The revolutionaries did not like granted these courts the authority of control on the constitutionality of laws in order not to interfere in its work and damage the legislative process.

The Second Possibility

This possibility is based on maturity and legal awareness, what may not have reached the level of contentment that such a position, that is, oversight of the constitutionality of laws, is the attachment to the judicial function, including the legislative function. In other words, it is possible that the French constitutional legislator who issued the eighth-year constitution for the revolution was believed to control the constitutionality of laws as functions that are consistent with the legislative work of Parliament.

Parliament, which legislates the law, is suitable to present it to the constitutional texts to ensure that it does not violate it before its promulgation. Particularly, since the law violates the constitution, it must be cancelled and repealing from another party, regarded as a punishment to the first party which issued the law.

Since Parliament is elected and Representative of the people, it is not appropriate to be punished by another party which is not elected. The position of weighting is not far from the first possibility is the most likely, and what support this likelihood is, this possibility was the real reason beyond the revolutionaries keeping away the judiciary from the administration's actions and dispute, even though its resolution is supposed to be one of the exclusive jurisdiction as it is today. However, the meeting of the two possibilities is not in the minds of the revolutionaries. They are both the motives for removing the judiciary from this jurisdiction and granting the Parliament itself. The constitution of 1799 made the French Senate a protector of the constitution. It monitors the constitutionality of laws to ensure that they comply with its provisions (Farjia, 2001).

The regulation of the constitutionality of laws was not only limited to the aforementioned French constitution but also appeared in other constitutions, such as 1852 constitution, which was in the era of Louis Bonaparte (the period which is called the Second Napoleonic dictatorship) in which Bonaparte overthrew the second republic against which the famous coupled in the second of December 1851.

The Conclusion

At the end of the research, we came to a number of results and recommendations which we will review the most important of them and as follows.

The Results

1. This oversight is evident in the two legislative councils system. In this system, one of the two councils can impose its control on the legislative work referred to it by the other council.
2. British is regarded as the mother country in which the system of the two legislative councils arose, as well the mother country for the arising of the Parliament.
3. The mutual control of the two councils of Parliament is evident when they are equal in the exercise of the legislative function.
4. Some constitutions gave control over legislative work to the Speaker of Parliament.
5. Some constitutions have given oversight of parliamentary legislative action to the Parliament itself, not to its Speaker.
6. Parliament has control over its legislative actions, many of the most important of which is that it is preventive control, and it maintains the principle of separation of powers. It is appropriate to create a way of balancing the constitution, legislation and other characteristics.

7. This oversight has a number of disadvantages, including that it is not neutral and may not be available in most members of the Parliament may be arbitrary in using this oversight authority.

The Recommendations

1. Since equality and balance favour their events between the two councils of Parliament. Therefore, we suggest that the Iraqi constitutional legislator organise the Federation Council with constitutional texts, as it did about the House of Representatives to bridge the imbalance between them.
2. We suggest that the Iraqi constitutional legislator organise the supervision of one council of Parliament over the other and clarify its borders, restrictions and everything related to it.
3. Whereas the criticism extends to granting oversight of the Parliament's work to its president, as well as to the Parliament itself. Therefore, we suggest that Iraqi constitutional legislator share them in their practice together.

REFERENCES

Abdalrazaq, M. Y. (1997). The Legislative Institution in Iraq Under a constitutional, 1925, 1970, PhD thesis, Baghdad University, College of Law, p94.

Al-Ani, H. M. (2007). Comparative political &Constitutional Systems, The Legal Library-Baghdad, 2007, p41.

AL-Bayati, A. (1991). The Stages of the legislation Process in the Iraqi Constitutions, Baghdad University, p138.

AL-Husseini, M. T. H. (2016). Political Systems, 1st edition, Zain library, Beirut, p87.

Ali Jawad, M. (1992). epic p15.

AL-Mashhadani, M. K. (2007). The Constitutional law (State, Govrnment, Constitution)Modern Arab Office, p169.

AL-Mashhadani, M.K. (2008). Political systems, the legal library, Baghdad, p33.

AL-Saidi, H. (1990). The Principles of the Constitutional Law &the Dvelopment of the Political System in Iraq, Dar Al-Hikma, Mosul, p164.

Al-shukri, A.Y. (2012). Mediator in Comparative Political Systems-1st edition, Dar –Al-Sadiq, Babil, p146.

Farjia, M. (2001). French Constitutions, Translation Ahmed Abass p65.

Fudeel, G. & Dilvo, P. (2008). The Administrative Law, Part 1, 1st edition, Translation by Mansour AL-Qadhi, Beirut, p73.

Hafidh, M. M. (1999). Al-Wajeez in the constitutional law.3rd edition, Dar Al-Nahda, Qairo, p126.

In French (Parlements) This is just a name that the French give to the courts or the higher judicial bodies distributed over the French regions, This designation has no connection with Parliament in the modern terminology, which means the Parliament or the legislative authority.