

# Scope of Caretaker Government's Political Responsibility under the Constitution of the Hashemite Kingdom of Jordan in 1952 and Its Amendments

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## Abstract

CG is a government whose term has come to an end, but is entrusted with the conduct of regular administrative work and follow-up of current issues, pending a new government becomes in charge of the exercise of constitutional power. CG may not take political decisions or any other actions which would have future effects, as it is tied to certain authorities, especially as it is politically unaccountable to the legislative power. The penalty resulting from such a responsibility is to withdraw confidence resulting in the need for the government's resignation, while the CG has already resigned, and, therefore, there is no room for the parliament to control as no questions or interrogatories may be directed to its members. Nevertheless, that does not mean exemption from other forms of responsibility.

## Introduction:

The Constitution of the Hashemite Kingdom of Jordan in 1952 adopts the parliamentary system. Although not expressly provided, such a system is characterized by bilateral executive power (King and Government), the Head of State (King)'s non-responsibility, and a Parliament elected by the people (House of Representatives), in addition to a mutual and balanced control between powers. The government is responsible before the House of Representatives, which has the right to give and withdraw confidence in the government, whereas the executive power has the right to dissolve the House of Representatives.

French jurist Phillippe Ardant defines the parliamentary system as the "system, which is characterized by the cooperation between the executive and the legislative power, and although the former is independent from the latter, it is accountable before it."

"Le régime parlementaire est caractérisé par la collaboration de l'exécutif et du législatif, le premier étant indépendant mais responsable devant le second" (Phillippe Ardant, 2003).

The government's political responsibility represents the cornerstone in the parliamentary system, without which the system loses its essence and changes in nature. Political responsibility means that the government actions comply with a mechanism of political assessment of its role in the implementation of the state's general policy as well as their practical results, which requires a specified constitutional action in return to this assessment. That may be positive, achieved in giving confidence, or negative in the case of no confidence.

Relieving a minister, a case of individual responsibility, and the government, a case of joint responsibility, is the consequence of the difference in the national will between the people's deputies and the government desire. If the no-confidence vote in the government is approved by the House of Representatives, the practice of the political function shall extraordinarily come to an end, and then, the expression of no confidence requires the resignation (Al-Sayyid Ali, 2008).

The Jordanian Constitution of 1952 and its amendments regulated the provisions governing the government's political responsibility as well as the House of Representatives' instruments to control its actions and mobilize its individual and joint political responsibility. The consequent political responsibility is the resignation of the minister or the government if they have lost the confidence of the House of Representatives. It is needless to say that a resignation indicates the end the political function exercised by the government, which necessitates the minister' abandonment of office and the submission of their authorities to the government in charge. However, the appointment of a new government may take a long time. That would risk a constitutional vacuum, with the state lacking a government to manage its affairs in the period between the resignation of the current government, on the one hand, and a new government's entrustment and gaining of confidence. Therefore, the constitutional custom created what is called so-called Caretaker Government (CG), which is entrusted by the head of state (King) to the resigning government to conduct the regular affairs until a new government initiates its constitutional actions.

Regular actions are basically restricted to daily administrative tasks, often left to the governing bodies to complete and approve – such as the appointment and transfer of staff as well as the performance of individual missions – over which the ministers only have limited control, (Decision No. 614 of December 17, 1969 - issued by the Lebanon's Consultative Council, 1970). The CG is basically not accountable before the legislative power for its administrative actions during that period due to the expiry of its mandate from a constitutional perspective

and its natural routine administrative actions. However, the period in which the CG exercises its mandate may take a long time and exceed regular administrative tasks. In this case, does its bear political responsibility for its actions?

The present research sheds light on the possibility of the CG's political responsibility under the provisions of the Jordanian Constitution of 1952 and its amendments, through identifying the nature of political responsibility, means of control over the government actions, the meaning of CG and the scope of control over its work.

### **Section One: The nature of Political Responsibility and Means of Control over the government actions:**

Responsibility, in its broad sense, refers to "a person's commitment to do or to abstain from an action; if they violates the pledge, they shall be accountable for their failure and shall bear the consequences" (Ismail, 2006). So, the term Responsibility generally describes the status of someone who may be asked about what they have said (Dictionary of Philosophy, 1983).

Responsibility is divided into 5 types: moral, social, religious, legal and political, which each having distinct characteristics. What concerns the research is political responsibility.

#### **I. Concept of Political Responsibility:**

**Political Responsibility** includes the commitment of each one exercising political authority by actions and words before the group it represents and their bearing of the consequences of these actions and words.

The origin of political responsibility is that a politician – while exercising their authority - commits mistakes which would harm the interests of the group; the failure to achieve the group's fundamental objectives in terms of internal and external security, stability and prosperity in the society; or the exercise of power against the group's view of public interest, which shall make them liable, even if they do not make a mistake. A politician who fails to achieve their mission or commits mistakes against the group to which they belong shall be subject to the accountability, punished by withdrawing confidence from their government, calling to relieve one of the minister, etc. (Mark Bevir, 2014).

Political responsibility is defined by a jurist as that responsibility "which is being held before the parliament or the people in accordance with the provisions of constitutional law. It is a responsibility held not for the actions of one in power which are contrary to a legal text, but for those actions which cannot be adapted in accordance with the provisions of law as legal or mistakes or crimes, but those actions which arise from general policy found to be incongruent with the interests of the state" (Nassef, 1981).

The concept of political responsibility depends on the state's existing political system. In a parliamentary, for instance, it means the minister's individual and joint responsibility before the parliament. Political responsibility may, and may not, be associated with the civil or criminal responsibility.

Many jurists argue that political responsibility is associated with the parliamentary system. When the members of Parliament that the policy and the actions of the ruling authority are contrary to the people's will, they condemn them and give it a negative value. This conviction or penalty takes the form of a no-confidence vote, indicating withdrawing the legitimacy of authority. Furthermore, as the government assumes the executive power, it is accountable to the Parliament, with political responsibility necessitating the government's actions compliance with a political assessment mechanism of its role in the implementation of general policy of the state as well as determining the practical results of these actions. There shall be a legal action in return to achieve a legal and unconstitutional effect. That may be positive, by giving confidence and may be negative in the case of withdrawing confidence. Relieving a minister, a case of individual responsibility, and the government, a case of joint responsibility, is the consequence of the difference in the national will between the people's deputies and the the government desire. (Al-Sayyed, 2008).

A French scholar summed the truth of political responsibility by saying, "The study of political responsibility is outside the idea of a mistake. We consider a politician accountable when they lose the confidence of around them because of their actions, even if they had not made a particular sin. Then, what is the justification of this responsibility?"

There is no justification for a penalty. It is not easy to resort to a financial justification because the damage cannot be precisely calculated. It is also not wise to cancel the actions carried out, for they are based on a discretionary authority whose reasons may not assigned and that shall imply that all the acts of political life may be abolished without distinction without anyone definitive. That would introduce general turbulence in the political exchanges as every measure becomes liable to repeated investigation. We must content ourselves with a type of responsibility to be related to anyone assuming any political post.... whether by relief, dismissal, toppling, presumptive resignation or otherwise "(Steve, 1939).

Political responsibility in accordance with the previous concept is featured by the following:

1. Actual political responsibility does not require proving a political mistake, because the political responsibility of ministers is a broad one, covering all their positive and negative, legal and illegal, intentional and unintentional actions. It is sufficient that the views of the government and Parliament differ on fundamental issues of general policy for the Parliament to mobilize the responsibility of the government as the representative

of the people's will.

2. Political responsibility includes control over legitimacy and convenience. When the Parliament monitors the government's general policy, it looks into the correctness of procedures and decisions both in terms of their compliance with the Constitution and laws (control of legitimacy), or in terms of their relevance to the real circumstances in which they have occurred as well as their compatibility with the common good and the Parliament's desires and trends (control of convenience).

3. Political responsibility is not a personal one, as it covers all the actions of ministers and their subordinates work also includes, for which the ministers are accountable.

4. Political responsibility may not be aroused later on. That is, if any government mistakes are discovered after the end of its mandate, political responsibility shall not be raised (Al-Sayyed Ali, 2008).

### **Second, forms of political responsibility:**

Article (51) of the Jordanian Constitution of 1952 states that "The prime minister and ministers share a responsibility for the general policy of the state. Each minister is accountable the House of Representatives for the actions of their ministry."

As is clear from the aforementioned article, political responsibility takes one of two forms: joint and individual.

#### 1. Joint Responsibility "Responsabilite Solidaire":

Joint or Collective political solidarity indicates that the government is accountable before the legislative power for its actions related to the administration of state's affairs. It shall win the confidence of the majority of the House of Representatives members. So, if that confidence is missed, it shall resign. One of the jurists believes that a government's joint responsibility is the political responsibility in its true sense. He says: "Joint or shared responsibility of ministers is the only political responsibility. It does not require the commitment of a crime like criminal responsibility. It is related to the actions and procedures related to the government's statement. Ministers are not only collectively accountable for the government actions, but also for the government's failure to perform some of its internal or national duties "(Adaylah, 2010).

Another French jurist, Laferrière, explains the concept of the government's joint responsibility, saying: "Ministers are collectively responsible for the general policy of the government, which is the common thought constituting a source of inspiration for the government and forming its programs, because it includes a certain position on the problems at hand and solutions inspired by a certain spirit. Each action is considered an expression or application of the common public thought of all the ministers for which they are all responsible, even if this action is performed by only one of them, unless they abandon solidarity with the minister declaring that the minister had acted in contrary to the general policy of the government. The moving the joint responsibility leads to the overthrowing the entire government "(Laferrière, 1947).

Joint responsibility includes withdrawing confidence from the Prime Minister to the government as its representative and guide. Article No. (50) of the Jordanian Constitution under the amendment published in Issue 5117 dated 1/10/2011 of the Official Gazette) states: "When the prime minister resigns, is relieved or dies, all the ministers resign by default". The government has the right to consider any mistake even attributed to a particular minister to be connected to the general policy and declare its solidarity with them. But, it shall reveal this explicitly before the Parliament votes to issue its decision on the basis of evidence. The House of Representatives has the right to consider any mistake, even attributed to a minister or a number of them, to be connected to the general policy and, thus, arousing joint responsibility (Hassanein, 1988).

Thus, it is clear that joint responsibility requires the resignation of the entire ministry, which is called in French La defiance de la chambre (Battikh, 1995 to 1996), which is expressed in the amended Article (54) of the Jordanian Constitution of 1952 (under the amendment published in Issue 5117 dated 1/10/2011 of the Official Gazette) stating:

"1. Confidence shall be withdrawn from the government or any minister before the House of Representatives.

2. If the House of Representatives decides to withdraw confidence from the government by absolute majority of the total number of its members, the government shall resign."

We note here that the joint responsibility is consistent with the role of the government in the parliamentary system. The government is a collective executive body that sets the general policy for the state and oversees its application by all the departments of the state. Accordingly, if joint responsibility is proven for the Government, then all the ministers are committed to resign, even if some of them are found to oppose the political issue of which the government is convicted, because the parliamentary system is based on the principle of ministerial solidarity. The ministers together make a constitutional entity and an independent will, which leads to consider the decisions of the Council of Ministers to be unanimous (Al-Sha'er, 2005).

We must differentiate between the responsibility determined when the government submits its statement<sup>1</sup> when

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<sup>1</sup> Government Statement "Manifeste Ministrielle": The prime minister presents their new government's programme in the

formed for the first time (request for confidence) and the responsibility decided later due to negligence and the inability to achieve what came in the ministerial statement as well as the administration of the country's affairs (vote of no-confidence).

(A) **request for confidence:** Each government formed for the first time shall submit a statement to the House of Representatives within one month from the date of its formation if the council is in session. It requests confidence on the basis of the statement.

But if the House is not in session, it shall be invited to an extraordinary session. The government shall submit its statement and request confidence on that statement within one month from the date of its formation. If the House of Representatives is dissolved, the government shall submit the statement and request confidence on that statement within a month from the date of the convening of the new Parliament (paragraphs 3, 4 and 5 of Article 53 of the Jordanian Constitution. The government gains confidence if the absolute majority of the members of the House of Representatives votes for confidence (paragraph 6 of Article 53 of the Jordanian Constitution).

(B) a vote of confidence: A vote of confidence to the government does not mean a permanent legal legitimacy, but a parliamentary recognition of the government and its political program, which keeps the government under the permanent parliamentary oversight exercised by both the House of Representatives and the Senate, but the second cannot have any responsibility towards the government. It is only the House of Representatives which can decide on joint responsibility of the Council of Ministers, pursuant to the provisions of Article 53 and Article 54 of the Constitution (Al-Khatib, 2014).

It may be useful to recall that the vote of no-confidence in the government shall be either at the request of the Prime Minister or at least ten members of the House of Representatives, pursuant to Article 53 of the Jordanian Constitution, stating: "1. A session of confidence in the government or any of its ministers either at the request of the prime minister or at a request signed by at least ten members of the House of Representatives 2. The confidence vote may be postponed once for a period not exceeding ten days if so requested by the competent minister or the government, and the Parliament shall not be resolved during this period."

## **2. Individual Political Responsibility: "Responsabilite Individuelle":**

Individual responsibility is the political responsibility of a minister before the House of Representatives for their minister's policy. It arises as a result of an individual act of a minister in a matter related to the management of their minister's affairs. The minister – whose confidence has been withdrawn confidence – is consequently relieved without affecting the rest of the government members.

It shall be definitely related to issues that the minister has an independent discretion. This type of individual responsibility is not inconsistent with the nature of the parliamentary system, because this system grants the minister broad powers in the managing the affairs related to their ministry. As it does not make the Council of Ministers an authority with tight control over the minister, it is natural that the minister bears their mistakes personally, pursuant to the principle of correlation between power and responsibility (Al-Tamawi, 1996, and also Mustafa, 1981). Thus, the theory of individual responsibility includes a form of punishment against the negligent minister (Salam, 1983). The minister's individual responsibility is not limited to their own actions within the scope of their powers, but also for the actions of their staff (Moodie, 1963).

Paragraph 3 of Article 55 of the Jordanian Constitution stipulates the obligation of the resignation of the minister who loses confidence, stating: "If the vote of no confidence concerns an individual minister, they shall resign."

## **3. Means of Control over the Government Actions:**

It has been clear that the government in a parliamentary system, in general, and in the Jordanian political system, in particular, is politically accountable before the House of Representatives. One of the jurists argues that the government's political responsibility is "the most important characteristic of the parliamentary system. It has been even said that it is suffice it for the constitution to adopt political responsibility to make the system a parliamentary one. The stipulation of such a responsibility in the centre of the Constitution makes the resulting political system parliamentary"(Abu-Zeid, 1988).

The government's political responsibility before the legislative power becomes useless, if the latter does not have the means to monitor the government's actions and, therefore, arouse its political responsibility or the responsibility of one of its members. Therefore, the constitution grants to the legislative power a number of tools to control the government's actions, and then arouse its political responsibility or the responsibility of one

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form of a written announcement and reads it before the members of Parliament. It states the objectives of forming such a new government and determines the regional policy, requesting the confidence of the Parliament. Before that, lengthy discussions cover the positive and negative aspects of the statement, along with attempts for modification. Giving or not giving confidence goes according to the balance of vote between the political blocs represented in the Parliament. If the MP's accept the content of the statement, it means that the government has gained confidence and is allowed to exercise its mandate; if not, the government shall submit its resignation to the head of the state" (Al-Jassour, 2004).

of its members, if necessary. Most scholars of constitutional law agree that the government's control over government's actions constitutes the core of the parliamentary system. That is, the government derives its existence and authority from the confidence of the Parliament – the representative of the people's will. Therefore, it is the MPs' right to monitor the government's actions (Sasila, 1988).

Another scholar believes that to reach the application of the stipulated political responsibility instruments goes through two stages: access to information, and then mobilizing political responsibility (Nassef, 1981). Let us recognize the means provided by the Jordanian constitutional system to enable the legislative power to monitor the government's actions and mobilize its responsibility:

#### 1. Question:

Article 96 of the Jordanian Constitution states that "Every member of the House of Representatives and the Senate may direct questions and interpellations on any matter of public affairs in accordance with the by-laws of the council to which they belong....."

A question is defined as: "a means of parliamentary control, whereby any member of parliament may be directed to any member of the government any question on any of the public affairs that fall within their power, in order to obtain certain information 'Seek Information' or urge a certain action 'Press for Action' (UK House of Commons, 2001,2002). The question is a form of parliamentary oversight exercised by any member of the Senate or the House of Representatives without mobilizing political responsibility.

This parliamentary question – in its control sense – means that enquiry which includes drawing indirect attention or guidance to do something or to avoid a certain gap or failure of performance. It also means – in its interrogative sense – a request for the clarification of a fuzzy matter, or providing the enquirer with a specific data unavailable to them. In either case, the question leads to uncover matter or irregularities requiring the use of other methods for a political impeachment of the government "(Kanaan, 2009).

A question represents a bilateral relationship between the MP and the minister, in which any other member of Parliament may not interfere. It is a personal right of an MP, which may not be given up or transferred to impeachment if the MP is not satisfied with the minister's answer.

The by-law of the House of Representatives defines a question as an enquiry by an MP to the prime minister or ministers of something the MP is ignorant regarding the affairs under their specialty, a desire of the MP to check an incident which they have heard about or an enquiry about the intention of the government about something. The question conditions are:

- a. The MP shall submit the question to the speaker of the council in writing.
- b. The question shall be brief and focus on the actualities required for clarification and devoid of commentary, debate and personal opinion.
- c. The subject of the question shall not be contrary to the provisions of the constitution, harm the public interest, include abusive or inappropriate language or refer to names of persons or their private affairs.
- d. The subject of the question shall not be related to the MP's personal affairs or interests or tasks with which they are entrusted.

The speaker of the council refers the question to the competent minister after ensuring the availability of the aforementioned conditions, and the minister shall answer the question in writing within a maximum period of eight days. The speaker communicates the answer to the enquirer and includes the question and answer on the agenda of the first session dedicated to questions and interrogations.

The question may be transferred to interrogation if the government does not respond within one month of receiving the question. The provisions of the by-laws of the Senate are similar to those of the House of Representatives (Al-Khatib, 2014).

Thus, it is clear that the system of asking questions system forces the government to constantly clarify its position, to justify its actions and decisions and get rid of any suspicions. It also helps to make the government daily connected with the public opinion. Furthermore, continuous questions make the role of the Parliament efficient and provide genuine dialogue between the executive and the legislative powers (Hauriou, 1966).

#### 2. Interrogation:

Interrogation is defined as that "action of finding on or certain facts, related to a specific situation in one of the executive bodies, whereby questions are raised by the enquirer or a number of MP's, answered by a minister or head of government, aimed at mobilizing political responsibility in the face of the government or one of its ministers, "(Salam, 1983). The objective of the interrogation is not to ask, as is the case of the question, but to criticize the government or the minister, attempting to uncover the violations or deviations in the government's or minister's policy or the minister before the parliament, which would be encouraged to mobilize political individual or joint responsibility.

The one performing the interrogation shall be fully aware of the specific actualities which carry an accusation to the government or one of its members. Sometimes the purpose of the interrogation is to reveal the minister's or the government's mistakes before public opinion, so as to weaken its position and stir public

opinion against it (Bin Bgeila, 2003-2004). The interrogation is one of the most dangerous parliamentary tools of oversight over the executive power's actions, because it could end by a vote of no-confidence against the interrogated minister or the government if convicted (Abul-Lail, 2001).

The by-laws of the House of Representatives state that the conditions of an interrogation are the same with the question. The interrogation shall be submitted in writing to the speaker of the Parliament, who shall report it to the competent minister. The minister shall answer in writing within a maximum period of two weeks, unless the speaker sees that it is an urgent situation and the minister agrees to shorten the period. If the minister's answer requires the conduct of an investigation, the minister may request the extension the term from the speaker.

The interrogation and the answer shall be included on the agenda of the first session dedicated to the issue. The floor shall be given to the interrogation applicant and then to the interrogated minister one at a time.

As the interrogation is not only about the bilateral relationship between MP's, senators and ministers, the interrogator's conviction of the answer may not end the issue if adopted by one of the members of either councils to which they belong.

It is noteworthy that, if the interrogation takes place before the House of Representatives and the interrogator is not convinced with the minister's answer, they shall explain the reasons for that. In this case, they and the other members of the Parliament may perform a vote of no-confidence in the minister in accordance with the provisions of the Constitution.

If the interrogation takes place before the Senate, the result is different, as it is limited to Senate's speaker's reporting to the prime minister the outcomes of the interrogation in writing.

### **3. Public Discussion:**

Public discussion is one of the means by which the Parliament imposes control over the actions of the government, as it centres on a public subject significant for the citizens, aimed at directing or holding the government accountable for the manner of handling the subject. Therefore, public discussion is one of the efficient means that show the government plans and actions, as the participation in public debate is open to all the members, but not only limited to those who have applied for the discussion of the topic (Al-Khatib, 1966).

The by-laws of the House of Representatives entitle 10 MP's or more to apply in writing to the Parliament for the discussion of any public matter. The discussion may also be conducted at the request of the government. As for the discussion before the Senate, it is limited to the request of 5 members or more senators and the approval of the Senate.

The by-laws of the House of Representatives necessitates the request to be in writing and signed by at least 10 members, submitted to the speaker, who shall be include it on the agenda of the first next session for discussion within 14 days or rule it out for the lack of importance or because it is not valid for discussion (Al-Khatib, 2014).

### **4. Committees of Parliamentary Investigation:**

Parliamentary investigation is one of the most efficient means of control for the legislative power in the face of the executive power, aimed at identifying a specific fact of the policy adopted by the government in managing the country's affairs. Parliamentary investigation is a procedure utilized by the Parliament for the purpose of knowledge. It is believed to be very practical, for it enables both the House of Representatives and the Senate to be informed about the government's departments' mistakes, in administration, financial or political terms, or to discover the deviations and disadvantages of performance the executive power is trying to hide. In light of the results of the investigations conducted by the National Assembly's, it can determine an effective way to eliminate these deviations and disadvantages (Qadri, no date).

Some argue that it is the Parliament's right to appoint a committee of its members to conduct a parliamentary investigation, derived from the notion that each legislative authority called to settle an issue shall be provided with the sufficient information about, whether the the Constitution stipulates parliamentary investigation or not (Tarboush, 1995).

Some define the committees of parliamentary investigation as "an action group formed by the legislative power from among its members in order to examine an issue related to the executive power and administrative agencies in order to be informed about the fact of that issue. These committees refer reports to the legislative power, accompanied by any decisions or recommendations to give the final say in that issue" (Rabi', 2002).

The by-law of each of the Jordanian House of Representatives and Senate allow for the appointment of temporary committees if any of them believes to be urgent. Therefore, it is the council which forms them, determines the numbers of their members and tasks, coming to an end when their task is completed. One of these is the investigation committee.

It should be noted finally that the committees of parliamentary investigation are not judicial entities and, therefore, they are not authorized to order the inspection of homes, to decide confiscation or issue arrest warrants. Their authorities are limited to the appointment of experts and the hearing of witnesses' testimony (Tarboush, 1995).

It seems that the question, interrogation and raising public discussion are efficient means of parliamentary oversight but also useful in the field of the ministers' political responsibility. As for the investigation committees, their outcomes may be useful in determining the ministers' penal responsibility, for the House of Representatives is the one to refer a minister to the public prosecutor. That shall be done only after meticulous enquiry and a decision issued by an absolute majority of the House of Representatives (Al-Khatib, 2014).

### **5. Petitions and Complaints:**

Article 17 of the Jordanian Constitution states that "Jordanians have the right to address the public authorities on personal matters or on matters related to public affairs in the manners and conditions specified by law."

So, if the government makes mistakes during work or transgresses Jordanian citizens' rights, Jordanian citizen is entitled to petition to the House of Representatives in connection with public affairs or a personal complaint.

Some define petitions as: "requests submitted to Parliament by some to present grievances and complaints which they are exposed to it, or a proposal to amend laws or administrative regulations. They are all in the face of executive power institutions, in order to intervene to have to lift those grievances or for the Parliament to adopt those proposals in the context of the Parliament control over the executive power and administration" (Hashem, 2002).

In the complaint or petition, the by-laws prohibit any prejudice to the Throne or the National Assembly or the Judiciary, and may not contain profanity or inappropriate words. The speaker of the House of Representatives shall decide to keep the petition or complaint which does not meet the required conditions. If the petition or complaint is referred to the minister, they shall provide an answer, which the speaker refers to the applicant. Each member of the House of Representatives shall have access to any petition or complaint when so requested to the speaker as well as to the minister's answer (Al-Khatib, 2014).

After looking into the nature of the government's political responsibility and the means to achieve the legislative power's efficient control over the government actions, we should explain the CG's role and scope of responsibility. That would discern the possibility of subjecting its actions to the control of the legislative power and, thus, achieve its political responsibility if possible.

### **Section Two: The Nature of CG and Scope of Control over Its Actions:**

We have already explained that the political responsibility of the government is one of the fundamentals of the parliamentary system. Therefore, the government may exercise its powers without that enjoying the confidence of the people's deputies. Consequently, if the government does not gain the confidence of the legislative power, or loses it later, it must withdraw from political life. The reason is that the government may only rule under the control of the Parliament, whose members may perform at anytime by means of questions, interrogations, public discussions and the vote on confidence in the government to force it to resign. If the government has already resigned, the parliamentary oversight becomes useless, because it is void of the authority of punishment. In fact, toppling an outgoing government is rather like shooting a dead person (Kazim, 2013).

Therefore, the authorities of an outgoing government (CG) shall be limited to the conduct regular administrative actions and current matters. However, political decisions shall be avoided, because the outgoing government. Even though the government is secured from the Parliament, due to its inability to punish it, the former can take many decisions against the will of the representatives of the nation, which may lead to major problems with the worst of results to the interests of the country, without the possibility of holding this government any political responsibility. Thus, the CG shall remain tied to day-to-day routine, away from any action binding the country in the future.

It is time to explain the nature of the CG through stating its legal basis and the role it plays, in order to determine the scope of control over its actions.

#### **I. Nature of CG:**

There is no article in the Jordanian Constitution which defines the CG, the scope of its actions, the role it shall play, how long it shall exercise its authority or its legal basis.

##### **1. The Legal Basis of the CG:**

It seems that the most correct opinion of the jurists is that the legal basis of the CG is the constitutional custom, generated by the need for the continuation of the state authorities in the performance of their functions, in addition to the desire not to endanger the interests of the country and the citizens due to the outgoing government's halt of managing the affairs of the country. Although some deny the existence of such a custom, arguing that the CG is based on a privilege granted by the head of state to the outgoing government. They justify their position by saying: "... but from our point of view, His Majesty the King – the head of state – is entitled to manage the state facilities in the manner and mechanism appropriate without entrusting the outgoing government with managing the state facilities and conduct of regular actions. There is no constitutional custom in the kingdom, as some claim, for the outgoing government to carry on with its actions until the formation of a new government. There is no constitutional custom amounting to a constitutional rule according to which the outgoing

government may exercise being a CG. Among the axioms of law that custom shall be generated from long and ongoing practices and without interruption or halt. Upon applying this to our reality, we find that since His Majesty the King assumed his powers before the resignation of a number of previous governments, he entrusted the ministries' secretary generals with the conduct of the authority until the formation of a new government. That is enough to reject the claim that there is a constitutional custom through which the outgoing government may be a caretaker until a new government is formed. On the one hand, no previous governments has been so entrusted. On the other hand, there are no constitutional provisions which permit it" (Al-Odat, 2012).

In spite of all the above, the outgoing government's role in performing the actions is dictated by necessity to fill in the constitutional vacuum. The steady adoption of this approach in light of the absence of regulatory constitutional provisions has led to the rise of a constitutional custom called Complementary Custom, generally identified to "refer to organize affairs not originally regulated by the constitutional legislator. A Complementary Custom fills in a vacuum left by the by the Constitution with regard to a specific constitutional affairs. Thus, a Complementary Custom establishes new legal rules, other than the Interpretive Custom, whose role is limited to interpreting constitutional rules in a written constitution.

The majority of jurists supports the legitimacy of the Constitutional Custom and its enjoyment of the same legal value of constitutional texts"(Al-Khatib, p. 470).

## **2. Definition of the CG:**

CG is defined as "the authority entrusted with securing the continuity and sustainability of national life from the date of the resignation of the government to the date of the new government formation and assuming of power (a decision by the French Council of State on 04.04.1952). It is also defined by the French Constitutional Lexicon as "a system applied, ...to all the outgoing governments, for these governments do not enjoy full power ...". French jurist Waline points out that the CG performs the current affairs characterized by urgency and do not have political significance (Duhamel, 1996).

As is evident, the expression "current affairs characterized by urgency" is a broad and imprecise phrase, which shall be determined. Unfortunately, no provision in the Jordanian Supreme Court is found to determine the scope of the authority of the CG or the concept of the current affairs characterized by urgency, which is the responsibility of this government. In addition, the Constitutional Court is of recent origin – established under the constitutional amendments to the Jordanian Constitution introduced on 1/10/2011. Thus, it has not yet had a chance to issue interpretive decisions on determining the authority of the CG, or the concept of current affairs or regular administrative actions which the CG shall perform. It may be useful to recall that the Lebanese State Consultative Council explains the meaning of regular actions and current affairs, distinguishing them from discretionary actions. One of its resolutions states that "... discretionary actions are those aimed at introducing new burdens, the disposition of important authorities or introduction of a fundamental change in the conduct of public interests as well as in the political, economic and social situation of the country under penalty of ministerial responsibility. These discretionary actions are out of the scope of "regular action" and an outgoing government, in principle, may not perform them, because they would necessitate the government's responsibility before the Parliament. But to allow a non-responsible outgoing government to perform them leads to the loss of responsibility for them, especially if the relevant measures taken are effective without Parliament exercising control over them.

The government, while performing regular actions, shall take the necessary measures imposed by the exceptional circumstances relating to the public order and state's internal and external security. It shall also perform the administrative actions to be carried out within specific periods within laws under penalty of lapse and abolition..." (Resolution No. 614 Dated December 17, 1969, issued by the Lebanese State Consultative Council, 1970).

The above council later on returned to explain regular administrative actions as: "... The urgent pressing actions, which cannot be delayed or postponed until the formation of the new government, whose speed requires taking immediate decisions or those limited to the implementation of daily management tasks ...." (Resolution 655 / 2009-2010 on 05/07/2010).

## **3. The role played by the CG:**

It is clear from the above argument that the role played by the CG is confined to carry out regular administrative actions which are current issues or habitual in nature. They are necessary for the proper functioning of public utilities and the making of decisions related to the ordinary tasks of these facilities, which is typically performed done by any government and considered of the current issues in nature. Public utilities shall constantly work, and administrations shall retain the authority to implement the various decisions. Therefore, the government signature is necessary to provide it with legitimacy in terms of power, because the halt of departments would completely paralyze the country. Thus, current affairs are those continuous and usual. There is no need to take a new initiative by the government about them. They are automatically prepared by the various administrative bodies, in which the minister's action is limited to add their signatures.

Current affairs are inherently daily procedures familiar to the administrative system, or are routines

performed at the lowest administrative hierarchy without any political dimension which would have future effects. This is expressed by French jurist Pierre Delvolve saying: "actions of related to the administration's daily activity, except for those leading to a permanent modification to a department, facility or legal system". An example may be the decisions of recruiting staff, provided that their appointment is not in high-level political posts (Ali,2014).

The CG also takes the necessary measures imposed by the exceptional circumstances relating to the public order and internal and external security of the state. It also serves as the administrative control with its various components: public security, public health, public peace and public morals.

According to the above, there are a number of actions which the CG shall refrain to do. These are, in nature, out of the scope of regular administrative actions and current affairs. Examples may be proposing bills, concluding international treaties and conventions, making decisions about changing the status of public institutions or utilities or prejudicing the rights recognized by the law. In general terms, that covers all the decisions of political dimension which would result in future effects.

### **Second: Scope of Control over CG Actions:**

We made it clear, when talking about the political responsibility of the government, that the penalty resulting from the no-confidence vote is the dismissal of the government, i.e., forcing its members to leave their posts and prevent them from exercising the political role they exercise. We also found that the CG is actually an outgoing government, which assumes the task of performing regular administrative actions and current affairs but not political roles. Therefore, it is not useful to raise its political responsibility because its maximum punishment is dismissal, which is actually realized. Consequently, most of the means of parliamentary control on the government actions also become useless and unjustifiable, for these means are enacted to mobilize the political responsibility of the government. There is no room here for the mobilization of political responsibility as previously explained. Accordingly the legislative power may not direct questions or interrogatories to the government or conduct public discussions, unless the purpose of these tools is to inform the public about the CG's transgressions and mistakes. Nevertheless the use of such means has not been customarily used to control the CG's actions. From the researcher's humble perspective, there are other methods of control which may be used: committees of parliamentary investigation, petitions and complaints. As the role of these means is not only mobilizing the political responsibility of the government, but also deciding on the legal civil and criminal aspects of responsibility of the government members. As such a responsibility is dependent from political responsibility, the CG members may be prosecuted for the crimes that may commit. There is no legal justification for exempting them from legal responsibility. The Ministers' Trial Law issued in 1952 and published in the Official Gazette on 1.06.1952 states the crimes for which a minister may be charged and prosecuted as a result of performing their job, namely:

1. **High Treason:** The law considers the following crimes as high treasons:
  - (A) Crimes against the external or internal security of the state as defined by the Penal Code
  - (B) Violations of the provisions of Paragraph 2 of Article 33 of the Constitution.
2. **Abuse of Power:** The Ministers' Trials Law considers the following crimes as abuse of power:
  - (A) Bribery offenses stipulated in the Penal Code
  - (B) Offenses of embezzlement and utilizing the position stipulated in the Penal Code
  - (C) Offenses of the abuse of power and the breach of the duty stipulated in the Penal Code
  - (D) Violation of any provision of the Constitution set forth in articles 9, 12, 13, 15 and 111 of the Constitution.
  - (E) Exposing the safety or security of the state to risk, arising from serious negligence or fault.
  - (F) Approve the disbursement of funds not included in the state budget.
3. **Breach of the Duty:** The following are considered breaches of the duty:
  - (A) If a minister buys or rents any of the state properties even by auction during their assumption of power
  - (B) If they enter into contractions or tenders held by any public administration or institution minor to public administration or subject to its control
  - (C) If they act as an agent or member of the board of directors of any company or practices trade.

### **The punishments are as follows:**

The minister who commits any of the crimes related to high treason stated in the Paragraph 1 of Article (4) by the penalties prescribed in the Penal Code. As for those stated in paragraph 2, they are punishable by hard labor. For the offenses stated in Paragraphs 1 and 3 of Article 5 (abuse of power), they shall be punished by the penalties stated in the Penal Code.

The offenses stated in Paragraphs 4 and 5 of Article 5 as well as the offenses in Article 6 of the Ministers' Trial Law shall be punished by imprisonment for a maximum of one year.

Minister Trial Law has imposes a fine of not less than the amount of damage caused to the state because of the crimes mentioned in Paragraphs 4 and 5 of Article 5, which shall not exceed its double. The fine is considered a civil compensation for the benefit of the state.

**The Ministers' Trial Law stipulates the possibility to hold the minister legal and civil responsibility,** binding the minister to compensate third parties for their harmful actions in accordance with the provisions of the Civil Code. This meaning is confirmed in Article (9) of the Ministers' Trial Law No. (35) of 1952, stipulating that "Ministers shall have civilian responsibility in accordance with the provisions of the Civil Law." This also indicates that the ministers' civil responsibility is decided in the same procedural and subjective provisions for any person (Al-Khatib, 2014).

As the CG exercises administrative actions, the administrative court may exercise control over them, bearing in mind that the control of the administrative court is that of legitimacy. This is confirmed by the Lebanese Consultative Council of State in one of its resolutions, stating that "In these cases, the measures of an outgoing government and their relevant conditions are subject to control by the administrative court due to the absence of parliamentary oversight and the lack of ministerial responsibility. The aim of such regulations is to ensure that the vital interests of the country are not wasted in the period of lack of ministerial responsibility. These regulations are provided by the parliamentary system to secure good and sound governance" (Resolution No. 614 of 17 December 1969, issued by the Lebanese Consultative State Council of 1970, p. 248).

Finally, it is worth mentioning that if the CG exceed its scope of action and takes political decisions, it will also be subject to the control of the public opinion, media and political parties. But this is only limited to uncovering mistakes and transgressions, naturally without leading to the punishment of the CG, unless it performs actions which constitute crimes punishable by the law. The CG has already resigned and has nothing to lose, but a member of the government whose mistakes will be revealed to the public opinion will lose their political future, will leave the political life forever and will never be entrusted with forming or taking part in any government.

#### **Results and Recommendations:**

At the conclusion of our study of the extent of the political responsibility of the CG, we have to remember that political responsibility constitutes one of the pillars of the parliamentary system, whose provisions were regulated by the Jordanian Constitution of 1952 and its amendments in its individual and joint forms. The CG cannot be subjected to political responsibility because the resultant effect is dismissal, whereas CG has already resigned. It is not politically responsible before the legislative power and, therefore, it may not be subject the means of parliamentary control, taking the forms of questions, interrogations and public debates because. Such means are allowed to mobilize political responsibility, which is inapplicable to the CG.

It is found that the authority of the CG is limited to regular administrative actions or current issues, which are routine matters far from the politics. The CG may not perform political actions or make decisions that result in future effects. The CG is created by the constitutional custom to fill in the constitutional vacuum resulting from the resignation of the government so as to ensure the continuity of the regular functioning of the state facilities. In other words, it is a necessity, which shall be utilized as much as required.

The Jordanian Constitution of 1952 and its amendments do not explicitly provide for the outgoing government to become a CG, specify the duration for its authority nor determine the scope of the authority of the CG. Thus, we call on the Jordanian constitutional legislator to introduce a constitutional amendment that includes a text on entrusting the outgoing government with managing the country affairs to resolve the dispute over the legal basis for the CG in the exercise of its authority. We also call on the Jordanian constitutional legislator to determine a specific period of its mandate, but to be as short as possible. The reason is that the CG is constrained government, whose mere commitment to the performance of regular administrative actions and current affairs for a long time would have negative impact on the development plans and progress of the country. That would lead to a result opposite to the envisaged target of the CG. It may even later harm the steady work of the State facilities as well as achieve the worst results at the political level. If the CG exceeds its mandate and takes political decisions or performs actions of future effects, the probability of damage to the interests of the country and citizen would be great, because the members of the government will act without fear of legislative control of their action. They have nothing to lose for they have already resigned.

We also call on the Jordanian Constitutional Court to issue an interpretive decision which describes the concept of 'regular administrative actions' and 'current affairs', which are essential of the mandate of the CG. As this concept – as explained above – is a loose one, it shall be carefully identified in order to determine the scope of the mandate of the CG, which may not be bypassed by a government – as noted above – with no political responsibility.

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