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## Impact of Parliament's Absence on the Exercise of Legislative Competence

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### **Abstract**

*In ordinary circumstances, the executive branch shall be competent to implement the laws promulgated by the legislature by issuing implementing regulations within the limits of the law to be implemented without any change, in the absence of legislative authority in certain ordinary cases, such as the period between sessions, the annual recess, the dissolution of the Council, or the country's exposure to exceptional circumstances which cannot be met by ordinary law, because of the urgent need to enact legislation required by the public interest in such circumstances, States tend to give the executive more powers than they normally did the legislative branch may delegate its legislative competence to the executive branch, and the question of adapting the executive branch's actions in the event of a failure to convene Parliament arises whether they are legislative acts or administrative decisions that are open to appeal to the courts.*

**Keywords:** *Absence of Parliament, Legislative Competence, Government Legislation, Constitution.*

### **Introduction**

The constitutions stipulate that, in accordance with the principle of separation of powers, only the legislature shall legislate and may not waive its competence to legislate or even entrust it to other authorities. However, recent developments, as well as progress in States, which has increased in a way that parliaments have not been able to keep pace, as well as the problems posed by war and internal unrest that the legislature has not been able to confront because of the technical capabilities and expertise it needs to enact appropriate legislation. In the face of Parliament's inability to cope with these crises, and in view of the urgent need for legislation and the slow enactment of legislative power, the legislative branch must cede part of its competence to the executive branch to exercise legislative competence through mandatory resolutions, whose nature and consequences differed from constitutions. This is what we will address in this research, which will be divided into two requirements, the first being to examine the delegation of executive authority and the second being to examine the legal nature of government legislation in periods of Parliament's absence.

### **Delegation of Executive Authority Exercising Legislative Competence**

The delegation of legislative competence is defined as the waiver by the legislature of part of its legislative competence on specific subjects of the executive branch under a law called the Authorization Act for the latter to exercise legislative competence through decisions which have the force of law and which results in the authorization being in writing rather than orally, replacing the legislative authority in accordance with the limits set out in the Authorization Act (Noordin, 2005, p. 36). The authorization of the executive branch to issue decisions with the force of law must be accompanied by certain conditions, which can be divided into formal conditions relating to the circumstances of the exercise of legislative authorization and

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substantive conditions relating to the application of legislative authorization. The formal conditions for the exercise of delegation are the existence of exceptional circumstances and the inability of ordinary laws to confront them, since the occurrence of exceptional circumstances cannot be countered by ordinary laws (Abdelkader, 2018, p. 33). As a result, the executive authority responsible for implementing the law requires the legislature to amend the texts of the laws in accordance with exceptional circumstances. Since the amendment takes place within the dome of the legislature and in the context of political confrontations between the parties, the country may be more at risk if it lasts a long time (Ajami, 2016, p. 295). In addition to the exceptional circumstances threatening the entity of the State, there may be a need for a law to be enacted with full speed and confidentiality and to avoid such consequences. Sovereignty must be given to the Executive (Fikri, 2006, p. 421), also a formal requirement is the requirement that the legislative branch be convened, since the legislative decisions of the executive branch can be given legal value only after authorization from the competent authority, this is the prerequisite of mandatory legislation, which does not have to be constitutionally stipulated, since it is the Commissioner of the "Legislative Authority" who authorizes the promulgation of mandatory regulations. Moreover, they determine their subjects, the basis of the basis and the duration within which the executive branch can exercise extraordinary competence in the field of legislation in the form of a law issued by the legislature, which is therefore required to be convened. The executive branch must comply with the regulations and restrictions set out in the Authorization Act (Jamal Al-Din, 2005, p. 333).

As for the substantive conditions of delegation of executive authority, they relate to the application of authorized decisions, which are the competent authority to issue legislative authorization. The competent authority to issue authorized legislation varies from State to State, according to the customs or constitutional texts, the legislation may be enacted by the Council of Ministers as it grants the power to legislate and this is due to the occupation of the legislative power. Furthermore, the executive branch is the fastest and aware of the needs of individuals. Therefore, the authorization decisions are issued by the Council of Ministers even if they are signed by the King (Badr, 2003, p. 45). This requirement is a means of distinguishing legislative mandate from necessity regulations from necessity regulations, the latter presupposes the absence of Parliament so that the Government can pass it, while the legislative mandate requires Parliament to be convened, that is to say, Parliament cannot act in specific circumstances under circumstances that need to be decided expeditiously. Consequently, the Executive Authority delegates some of its legislative competence to overcome these unusual circumstances, as well as the requirement that mandatory legislation should be submitted to Parliament (Mutalib, 2022, p. 200).

States differ in terms of their organization of delegation of executive power in their constitutions, for example with regard to the Constitution of the Hashemite Kingdom of Jordan of 1952. Although it does not contain a provision authorizing or prohibiting legislative authorization, therefore, if the legislative branch delegates part of its competence to the executive branch, that mandate is null and void in violation of the Constitution. The Jordanian Constitution confers the legislative function of the King and the Council of the Nation. The reason why Jordan's executive power cannot be delegated legislative competence is that the Constitution has given the executive broad powers to deal with exceptional circumstances. Among those powers is the right of the executive to issue provisional laws "Necessity Regulations" (Abdullah, 1992, p. 33), article 94 of the Jordanian Constitution stipulates: "When the Council of the Nation is not sitting or dissolved, the Council of Ministers, with the consent of the King, shall have the right to make provisional laws in matters requiring the adoption of necessary measures that do not tolerate delay or require the disbursement of urgent expenses that cannot be deferred shall be submitted to the Council in its first consensus and the Council may approve or amend these laws. If it rejects them, the Council of Ministers, with the consent of the King, shall declare them invalid immediately and from the date of such declaration, provided that this does not affect contracts and acquired rights".

With regard to the position of the Kuwaiti Constitution of 1962 concerning the legislative delegation of executive power, notwithstanding article 50 of the Constitution, "The system of government shall be based on the separation of powers and their cooperation in accordance with the provisions of the Constitution. No authority shall be permitted to deviate from all or part of its competence provided for in this Constitution." It is clear from the text that no authority may waive part of its competence to another authority, which means that the Kuwaiti Constitution refers to the indirect prohibition of legislative authorization. However, Kuwait's constitutional legislature has returned and authorized the explicit introduction of the legislative mandate through the explanatory memorandum of the text of the article. (50) of the Constitution, which reads: "This provision does not preclude the legislature from authorizing the Government to take over a particular order and a particular circumstance rather than the legislature by law, in which case this law may set out some of the main directives and provisions that the Government must abide by in the exercise of this right..."(AL-Tabtabai, 1994, p. 599).

As for a situation to the position of the Constitution of the Republic of Iraq of 2005 on the legislative delegation of executive power, there is no provision authorizing the delegation of legislative competence, but article 61/IX/C states that "the Prime Minister shall be empowered to administer the country's affairs during the period of the declaration of war and the state of emergency, which shall be regulated by law, not contrary to the Constitution". Through the above constitutional text, the Constitutional Legislature authorized the House of Representatives to approve the Declaration of the State of War and the State of Emergency and to grant the executive authority of the Prime Minister the necessary powers to administer the country's affairs during the period of its proclamation. In doing so, we find that Iraq's political and constitutional realities do not allow Parliament to delegate part of its legislative powers to the executive branch so as not to lead to the dominance and domination of legislative action by the Government, thereby infringing upon the competence of the legislature and thus violating the principle of the rule of law and the separation of powers underlying Iraq's constitutional order (Amran, 2015).

### **Legal Nature of Government Legislation in Periods of Parliament's Absence**

The constitutions disagree on the nature of what is issued by the executive branch under these circumstances and the consequences thereof and the Parliament's position thereon when it is convened, as to the nature of the executive branch in the absence of Parliament, this subject has received much interpretation as to whether it is administrative decisions that can be challenged by abolition, or are legislative acts and therefore immune from abolition, with regard to the nature of Jordan ' Provisional laws, which must not contravene the provisions of the Constitution, shall have the force of law and shall be submitted to the National Assembly at its first meeting... ". Article 94 of the Constitution of the Hashemite Kingdom of Jordan of 1952; therefore, temporary laws have the same legal value as ordinary laws, so that they can repeal or amend any ordinary law, because the legal rule is amended or repealed by an equal or higher rule of law, The wisdom for which interim laws have been given the force of ordinary law is that exceptional circumstances require swift action, while Parliament is not in place for its non-convening or dissolution, it is self-evident that the Government will avoid these emergency circumstances by enacting interim laws. However, these laws may not contravene the Constitution, as expressly stipulated in article 94 of the 1952 Jordanian Constitution "... Such provisional laws, which shall not contravene the provisions of this Constitution, shall have the force of law... "This is an obvious and logical result, since the Parliament with inherent competence does not have a violation of constitutional norms; it is foremost that the Government does not have it (Al-Jarrah, 2017, p. 26 et seq).

As to the legal nature of the decrees by law in Kuwait, the legal nature of the decrees should be determined by a distinction between two stages, the first before Parliament's ratification of the decrees, and the second after Parliament's ratification (Wehba, 1973, p. 125). As his statement states: -

### **A. Legal Nature of Decrees by Law Before Ratification**

Jurisprudence on the nature of decrees by law settled prior to their ratification by Parliament on the view that such decrees and their effect remain by virtue of their source of administrative acts issued by the executive branch. "Because the Prince of Kuwait does not legislate laws, but in certain circumstances may issue decrees of law and the fact that such decrees are not issued by the legislature, they are not laws but have the force of law by virtue of their promulgation in circumstances that threaten the country's security and require rapid treatment (Medical, 2005, p. 68). Thus, according to the formal standard, decrees by laws in Kuwait are prepared prior to the Parliament's ratification by administrative decisions and are in conformity with the laws in that they create general and binding legal rules, since the formal criterion applies to the author of the act, and the decrees by law of the executive branch are thus considered administrative decisions, The essence of the difference between decrees by law and laws passed by the legislature in normal circumstances is that ordinary laws remain in force until they are amended or overturned explicitly or implicitly by the competent authority for legislation. Decrees by law are in force and their effects continue to depend on Parliament's decision thereon after they are submitted to it (Baz, 2006, p. 113 et seq).

### **B. Legal Nature of Decrees by Law After Ratification**

The majority of jurisprudence argues that once the decrees have been passed by Parliament by law, they are transformed as a result of this passage into ordinary laws. Thus, since the date when these decrees were ratified by the Council of the Nation, they have become laws strictly speaking. They are no longer administrative decisions. The passage of the Parliament does not prevent the judiciary from simplifying its control over them after they have been approved by Parliament in terms of their constitutionality, as with ordinary laws subject to such control (Hussein, 210, p. 42). While some of the jurisprudence opposes the fact that the said decrees are to be regarded as laws after their ratification by Parliament, according to this view these decrees remain administrative decisions even after their ratification by Parliament because such ratification does not change their nature, the law must have a single, established nature, and the Parliament's ratification of these decrees is a supervisory act on the work of the executive branch that does not give it the status of law (AL-Jasimi, 2012).

With regard to the legal nature of the decision to declare a state of emergency in Iraq, the Court of Cassation of Iraq proceeded to a number of acts of sovereignty. In its judgment of 9 May 1966, the Court stated what the acts of sovereignty were. "The acts of sovereignty as established by jurisprudence and the judiciary are those of the Government as a governing rather than an administration, By virtue of this supreme authority, it shall regulate its relationship with other public authorities, whether internal or external. or have to maintain the State's entity at home, or advocate its policy abroad and hence more likely to be measures in the internal or external sphere, To regulate the Government's relationship with the public authorities and to pay harm and evil to the State at home or abroad, It is organized for the Government's relationship with the National Assembly or the Supreme Defence Council Martial Law and the State of Emergency " (Judgement of the Court of Cassation of Iraq No. 1948, Human Rights, 1966).

The above judgement, in a case in which an individual challenged the unlawfulness of a measure taken by the Emergency Authority of northern Iraq to the detriment of it - expressly reveals the Court's direction as an act of sovereignty by the decision to declare a state of emergency State security ", on the basis that it is a decision to preserve the security of the State and its entity at home and abroad on the basis of the objective criterion adopted by the Court to distinguish between the act of sovereignty and other acts of government. However, the National Safety Defence Order No. (1) of 2004 the situation has changed and the decision to declare a state of emergency, like any other administrative decision subject to judicial control, is no longer an act of sovereignty when the legislature stipulates in article IX,

paragraph 2, that "The decisions and actions of the Prime Minister shall be subject to the supervision of the Kurdistan Court of Cassation and the Kurdistan Courts of Cassation in respect of emergency proceedings within their regions and the Federal Supreme Court shall conclude that such decisions and procedures shall be annulled, nullified, unlawful or approved, taking into account the exceptional circumstances under which those decisions and procedures were issued".

## Conclusion

### First: Results

1. The legislative branch may waive part of its powers to the executive branch, but this is done in accordance with certain conditions stipulated in the constitutional documents, as well as in the authorization laws issued by the parliaments.
2. The delegation of executive authority in the exercise of legislative competence instead of the legislative authority having inherent competence in the legislation must be accompanied by formal conditions relating to the circumstances of the exercise of legislative authority, and substantive ones relating to the application of legislative authority.
3. The nature of the legislation promulgated by the executive branch prior to its submission to Parliament differs from the nature of it after it has been submitted to it. In the first case, it is an administrative act promulgated by the executive branch. After its adoption by Parliament, it is transformed as a result of this approval into ordinary laws.

### Second: Recommendations

1. We recommend to the Iraqi legislator that the decision to declare a state of emergency be subject to the supervision of the competent judiciary, which is the administrative judiciary and not the ordinary judiciary of the Court of Discrimination.
2. We recommend that Iraq's constitutional legislature include a provision in the Constitution that allows the executive branch to intervene in the legislative process through legislative authorization in order to avoid lengthy parliamentary proceedings and to confront certain exceptional circumstances.

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