

Received: December 2023 Accepted: January 2024

DOI: <https://doi.org/10.58262/ks.v12i2.366>

Legislative Shortcomings in the Constitutional Formulation of the Provisions of the Public Budget

Zainab Abdulkadhim Hasan¹, Sanaa Mohammed Sadkhan²

Abstract

It is no secret that constitutions occupy the highest place in the legal system of the State as the reference on which all the State's legislation is based in its various steps, constitutional wording is the most important step in the course of drafting the Constitution so that it is classified as one of the most difficult and precise legal formulations. The healthier, more rigorous and more restrictive its formulation, the more this reflects the stability of the State's legislative system. In the light of the importance attached to the constitutional wording, it is necessary to extrapolate and analyse the separate constitutional texts on the public balance to monitor its drafting deficiencies, formality was an objective mother that constituted a deficiency that needed to be addressed by treatment, and we will examine it in detail in this research.

Keywords: *Legislative Deficiencies, Constitution, Legislative Formulation, Public Budget.*

1. Introduction

Most constitutions include, if not all, a series of texts regulating basic principles and foundations relating to the organization of the State's economic and financial affairs, which in some legislation are called permanent or fixed constitutional laws governing the public budget, as well as an indication of their entry into force for an unknown time until they are expressly or implicitly repealed by subsequent legislation. The formulation of this constitutional regulation of the budget may be disadvantaged in its various forms, whether it be vacuum, ambiguous, erroneous, repeated or redundant. The constitutional text fails to achieve the purpose of its legislation and is unable to achieve its objective. This requires research, monitoring and possible legislative solutions to reduce their impact on the realities of Iraq's budgetary legislation.

2. Study Importance

The importance of research stems from the importance of the Public Budget Act itself. We do not exaggerate if we describe the annual Public Balance Act as helping the Government and its effective tools by which it manages the State's finances and guides the future of its Government, being the Governor of the Government for the implementation of its annual programme, which may decide whether or not to remain in power. This requires the proper legal wording of its provisions in the form that ensures our good implementation.

¹ College of Law, University of AL- Nahrain, Iraq. Email: zainababdulkadhim92@gmail.com

² College of Law, University of AL- Nahrain, Iraq. Email: sanaa@nahrainuniv.edu.iq

3. Study Problem

Research raises many questions that pose real problems:

- A. What is the constitutional wording of the public budget provisions?
- B. What are the shortcomings of that wording? What are the reasons for this?

4. Study Objectives: I

In order to identify shortcomings in the constitutional formulation of the public budget, we have influenced the use of the inductive curriculum by reviewing all the constitutional texts on the public budget, which are characterized by the deficiency of the drafting shortcomings.

5. Concept of Deficiency in Constitutional Formulation

Since legislation is the creation of man, its perfection must be flawed, thus becoming one of its defects, which requires reform in order to return matters to their correct legal order so that these legislations achieve their desired goal. Therefore, we will divide this topic into two topics: the first will be devoted to the definition of constitutional drafting, and the second will be devoted to the reasons for the shortcomings in the constitutional drafting of the public budget provisions (Abbas, 2007, p. 56).

5.1. Meaning of Deficiency in Constitutional Wording

The constitutional wording is defined as "The exterior or physical appearance worn by the constitutional texts after they have been emptied in a written document". As to the notion of inadequacy, the jurisprudence and its orientation in identifying its definition and adjusting its meaning differed, with some suggesting that it should be defined as: "The loss of the text necessary to govern a particular case, i.e. the absence of a rule of law, or its existence, but is incomplete to resolve an issue in which it is supposed to be regulated by a rule of law" (Obaid, 2019, p. 31).

The doctrine is divided into "Real and false". The first two forms are the total loss of the governing legal text of a matter, which is expressed as "the loss of the text necessary to govern a particular case" and is termed "Total vacuum". The second picture is the real inadequacy resulting from the lack of text, as expressed in the jurisprudence: "The failure to guarantee the legal rule of partial, detailed provisions necessary for the integrity and accuracy of their application", which is termed today (Legislative deficiency or partial vacuum). As for the fake shortcomings, it is intended "The inequality or incompatibility of the legal rule with the socio-economic and political conditions prevailing at the time of their application". It is called an ideological or critical deficiency (Fath al-Bab, 2012, p. 258).

From what we have presented to the concepts of drafting and deficiency, we have reached a modest conviction that we can stand on the concept of the inadequacy of the legal wording of the texts governing the public budget by comprehensively defining its images as "A disadvantage to the constitutional and legislative aspects of the legal text of the public budget loses the purpose for which it was initiated, which would create a legal vacuum, inconsistency, ambiguity or disadvantage in legislative wording in a way that would make it difficult to adapt the provision to the content of that situation" (Al-Shukri, 2020, pp. 15-16).

5.2. Reasons for Inadequacy in the Constitutional Wording of Public Budget Provisions

The researchers' views have varied and they are seeking an explanation for the shortcomings in the drafting of the constitutional document in Iraq. Some have argued that this is, in fact, due to, *inter alia*, the circumstances associated with the formation of the constitutional document, including that of a timely drafting institution.

It is no secret that the Constitution of the Republic of Iraq of 2005 was written under less exceptional circumstances, whether because of the security situation, the transitional political situation or the timing imposed on the commission charged with writing. Which led to a failure to take into account and even a violation of sound standards in drafting, and this is what made many of its texts, including those related to the budget, marred by shortcomings (Al-Khasawneh, 2014, p. 156).

With regard to the timing within which the Constitutional Writing Commission is supposed to complete its work, the Law on the State Administration of the Transitional Phase of the Commission has set a period of (6) months, while some point out that the real time during which the Constitution was written is only 6 weeks, the Committee's 55 members were selected and voted on by the National Assembly, it was then recommended that (15) be elected a new member representing the absent political components of the Committee, the first meeting of which was held on 4 June 2005, and the members appointed to the Committee only proceeded on 5 July of the same year, resulting in the useless depletion of the Committee's prescribed time (Al-Masarwa, 2012, p. 19).

It is certain that setting periods in accordance with the above mechanism led to a reduction in time and haste of discussions at the expense of unity of ideas, consistency and coherence of wording, which led to falling into the trap of shortcomings that the Constitution Writing Committee itself acknowledged and sought to avoid by adding the text of Article (142), which includes the formation of a parliamentary committee to make the required constitutional amendments (Al-Sarraf & Hazboun, 2008, p. 80).

In addition to the time factor, another factor has led to the growing inadequacy of the constitutional text in public and the balancing texts in particular, as reflected in the transitional political circumstance of the 2005 Constitution, As well as the emergence of what is known as political consensus, which has led to interest in the inclusion of specific topics that guarantee them certain gains in the Constitution at the expense of the professionalism and quality of the constitutional wording, some believe that the lack of crystallization of political trends and the uncertainty of the political reality at the time led to settlements relating to the conflicting parties' interests (Ahmed, 1979, p. 157). If this were at the expense of overthrowing the rules to be adhered to when drafting the Constitution, it would result in constitutional texts that suffer from a drafting deficiency. This is why the 2005 Constitution of the Republic of Iraq has been described by some as an exceptional Constitution that suffers from deficiencies in many of its provisions, since the substantive misstep in its provisions today was agreed upon at the time, which is intended to reach a safe area between the parties, the erroneous expressions and formulations reflected the lack of knowledge and ignorance among the Committee's members of the provisions of constitutional wording by reason of time constraints, the existence of occupation, the complexity of the political climate, as well as the weakness of the institution charged with drafting (Adel Talib, 2017, p. 134).

6. Deficiencies in the Constitutional Wording of Public Budget Provisions

This title was divided into two sections, where we allocated the first section to the drafting error, while the second section was devoted to a statement of shortcomings in the constitutional wording of the public budget provisions.

6.1. Formulation Error

An error means "The appearance of the text contrary to what must and should be assumed" whether it is a material error relating to the linguistic, grammatical and spelling aspects that accompanies the legislative process from the stage of preparation until its publication in the Official Gazette, or a legal error, which is unintentional and often unintentional by the legislator and has even occurred in the lawmaker's partner as a result of its inadequate formulation and the strict selection of its vocabulary, resulting in a loss of purpose (Al-Badiri, 2021, p. 6).

While fully acknowledging that the error is an innate feature of the drafter as a human being, the keen jeweller is supposed to avoid and avoid legal errors in the drafting of constitutional texts on public balance, extrapolating from the texts of the Constitution of the Republic of Iraq of 2005, we found that the legal error has seeped into its wording in a number of areas, including the legislature's frequent use of the term "public balance", namely, article (62/ 1), which stipulates: "The Council of Ministers shall submit a draft public budget law". However, he departed from this frequency when the term "one-time budget" was used for no objective reason, as follows: "The federal authorities shall... make the public budget of the State" (Al-Bakr, 2014, p. 212).

Some point out that the term balancing is the most accurate and closest to budgetary validity. The latter is a term with a different meaning that our Constitutional Bill would have merited not wanting to multiply the Constitution, because it is used under private law to reflect the amount of private expenses of persons against the profits generated by their projects, the balance related to the regulation of the State's public expenditures and revenues during a future fiscal year, so borrowing the individual from private law seemed unsuccessful.

In turn, we support the above view and affirm that the term budgetary benefits from a full equivalence between the two aspects of expenditure and income, while balancing means trying to fit in between them. In doing so, they are consistent with modern trends that consider balance as a tool for economic and social balance and not just computational balance. Therefore, the first was for our legislature to unify terminology and avoid unjustified and unjustified diversification based on strict objective grounds. Thus, the above-mentioned text represents a redundancy and redundancy in which the constitutional legislature was rather not situated, it represents a flawed gap in the legal construction of the drafted text on the one hand, and it is contrary to the elaborate wording characteristics, which are concise and far from undue redundancy and redundancy on the other (Latif & Rashid, 2019, p. 52).

The Constitutional Legislature made another material mistake when it used the vocabulary "Things and Business" in connection with his talk about the caretaker Government, which, under the terms of Article 62/VIII of the Constitution, was described as a Government for the day-to-day conduct of matters, as follows: "... the Prime Minister and Ministers shall continue in office for the day-to-to-day conduct matters." While calling it the Government of daily business in the text of article 64 of the Constitution "... the Council of Ministers in this case is regarded as resigning and continues to conduct daily business", The first was the constitutional legislature's standardization of terminology rather than moving from one term

to another, especially if those terms were of one significance without the need to diversify the unjustified vocabulary, which would disrupt the element of expression in the drafting of the constitutional text (Abdel Hadi, 2009, p. 103).

6.2. Emptiness & constitutional Ambiguity.

To take note of the issue in all its aspects, we will divide this section into two separate points, the first devoting to the constitutional emptiness and the second to ambiguity whenever they are placed in the Constitution.

1. **The Constitutional Emptiness:** Jurisprudence and writers in the definition of emptiness differed in many directions: "The legislative text is not completed as it should be by omitting a letter or word, which leads the applicant to complete the deficiency and fill the deficiency guided by the intention of the legislator and the wisdom of the legislation". Among the most prominent emptiness applications in the constitutional text on budgeting are:

1. **Emptiness in the Texts Regarding the Timelines Related to Submitting the Draft Budget Law:** As far as the matter relates to the constitutional provisions on the public budget, article 62 on the competence of the Council of Ministers to submit the draft public budget stipulates: "First, the Council of Ministers shall submit the draft public budget law and the final account to the House of Representatives for approval". It seems obvious that the above text is specific to the author of the draft public balance (Al-Shukri, 2017, p. 312).

Criticism was directed at the clause, first of all, from the text above, because it entails a clear constitutional defect due to its setting the constitutional time period necessary for the government to submit a draft public budget law. In addition to the neglect of the text to specify precise constitutional dates for submitting the final accounts on the one hand, and more precise dates for their obligatory reading by the House of Representatives on the other hand, as they are the most prominent means of subsequent oversight over the implementation of the public budget. Therefore, the constitutional legislator fell into the defect of partial emptiness due to the text's omission to mention those dates and specify them in the body of the constitutional document.

In our view, the negative indications of the drafting of the above constitutional texts can be clearly and clearly seen in the fact that Iraq's public budget laws, such as the failure of both the Council of Ministers and the deputies to submit and approve the draft law in question, are clearly timely, clear and untenable, with penalties for violation that may amount to a withdrawal of confidence from the Government or the dissolution of the House of Assembly in some constitutions (Hussein, 2018, p. 40).

2. **Failure to Provide for Timely Submission of Final Accounts.** The final account is "A detailed account record of all the amounts actually spent by the State on various aspects of government expenditure, and all the amounts actually collected from various sources of revenue during a period of time usually one year". Following constitutional texts on the public budget, the legislator finds that the vacuum deficit occurred when he omitted the mention and presentation of the final accounts when drafting the constitutional articles on the public balance and considering them as an exclusive competence of the Federal Government contained in article 110 of the Constitution, contrary to the constitutions of other States that contain such texts at the heart of the Constitution, this is a clear legislative lack that the legislature should avoid (Al-Bakr, 2014, p. 224).

2. **Ambiguity:** Ambiguity is one of the disadvantages of the legal text and is intended not to clarify the meaning and meaning of the text in its building and the text is described as ambiguous when its wording is unclear as to its content and purpose, This is due to several causes, most notably the weakness in the language of the text, as a result of the limited language potential of the drafter or by doing the same text method when a minor or complex installation comes, which makes it difficult to understand the real intent of the legislator.

Following the constitutional texts on balance, we have monitored many of the places where the legislature has fallen short of ambiguity and ambiguity, perhaps most notably the ambiguity of the timing of the passage of the balancing bill. One of the constitutional provisions on the Law on Public Balance is article 57, which reads as follows: "The House of Representatives shall hold an annual session in two legislative chapters..., and the chapter of the session in which the public budget is presented shall not end until it has been approved". Iraq's constitutional text is marked by the incomplete legislative wording as a vague and vague year lacking precision in several respects. Since the text did not set a numerical time limit, it gave the Chamber of Deputies room to keep the term open indefinitely, contributing to the continuation of the Council's repeated delays or failure to approve the Law on Balancing, primarily exploiting that constitutional orientation by making the time factor wide open. The above text constituted an opening and argument for the inaction of the House of Representatives and a means of pressuring the Government in certain files stuck between them, which would create further financial problems in the country (Al-Shukri, 2017, p. 352).

The other shortcoming is the ambiguity of the substantive scope of the constitutional text, which refers to article 57 of the Constitution, which refers to the fact that the House of Representatives remains in session until the public balance is approved. This has led some to question the extent to which the above text is comprehensive to the supplementary budget, if a supplementary budget is presented to the House of Representatives, will the session be open until its approval? Or can sessions be broken up before that? As a result of the ambiguity of the text, the matter was submitted to the Federal Supreme Court for interpretation, which confirmed that the public budget single includes the supplementary budget since the "supplementary" part takes the provision of the entire public budget (Al-Badiri, 2021, p. 56).

Conclusion

First: Results

1. It has become clear to us that the constitutional legislature has repeatedly fallen foul of the constitutional wording as its confusion between the terms budgetary, budgetary, business and other terms.
2. We recorded that the Iraqi constitutional legislator fell into the trap of inadequacy when he omitted to establish peremptory time limits for the submission and confirmation of the balance.
3. We are suited to examine the lack of ambiguity in the legislature owing to the inaccurate wording of article 57 of the Constitution, which has kept the legislative chapter in session pending the approval of the balance, thus opening a door for the Council to be delayed in approving under the umbrella of that constitutional provision, in the absence of sanctions against such delay in some States.
4. In his examination, we confirmed that the legislature was in a vacuum deficit, such as the lack of a provision for the timely submission of final accounts and the absence of a provision for political responsibility arising from the abstention from the legislation of the Public Budget Act.

Second: Recommendations

1. We recommend to the Iraqi legislature that the time limits for the submission and approval of the balance and final accounts should be determined objectively in the core of the constitutional document in the form that gives it a name above the wishes of the legislative and executive authorities.
2. We call upon the Iraqi legislator to reform the wording of article 57 of the Constitution by removing the inability of that article and merely expressing its chest in view of the depth of the negative effects caused by that wording, as it has produced an inverse effect when the legislative chapter has been kept open until approval, as it became a haven for the Council's failure to approve the draft balancing code for launching the time limit in the constitutional text.
3. Calling on the Iraqi legislator to include a text in the constitution that specifies the legal responsibility of the legislative and executive authorities as a penalty for their failure to submit or approve the budget on the specified dates.

References

1. Abbas Al-Sarraf & George Hazboun, (2008), "Introduction to the Science of Law/Theory of Law and Theory of Right", 1st edition, Dar Al-Thaqafa for Publishing and Distribution, Amman.
2. Adnan Ajel Obaid, (2019), "In-depth Studies in the Constitution of the Republic of Iraq of 2005, out of print", Jalal Press, Alexandria.
3. Ali Ahmed Abbas, (2007), "legislative drafting and its impact on law enforcement, research published in the Journal of Legal Studies", House of Wisdom, Issue 21, p. 56.
4. Ali Youssef Al-Shukri, (2017), "The Art of Drafting Punitive Texts", First edition, Zain Legal Publications, Beirut.
5. Ali Youssef Al-Shukri, (2020), "The Secrets of Constitution-Making", First Edition, Zein Legal Publications, Beirut.
6. Eliwa Mustafa Fath al-Bab, (2016), "The Mediator in Enacting, Drafting, and Interpreting Legislation". Book Two, Out of print, Legal Book House, Egypt.
7. Haider Adham Abdel Hadi, (2009). "Principles of Legal Drafting, first edition", Dar Al-Hamid, Amman-Jordan.
8. Haitham Hamid Al-Masarwa, (2012), "Defects in legislative drafting and ways to avoid them, research published in Parliamentary Life Magazine", Lebanon, Volume 82, 2012, p. 19.
9. Hassan Ali Al-Badiri, (2021), "The exceptional circumstances that influenced the drafting of the texts of the Constitution of the Republic of Iraq for the year 2005, research presented on the agenda of the sixth session of the Academy of Constitutional Law", published on the official website of the Arab Organization for Constitutional Law, p. 6 and following. <https://aacl-mena.org>.
10. Ismat Abdel Majeed Al-Bakr, (2014), "Problems of Legislation, out of print", Dar Al-Kutub Al-Ilmiyyah, Beirut.
11. Maitham Faleh Hussein, (2018), "Legislative Deficiencies in the Iraqi Penal Code", PhD thesis, College of Law, Al-Nahrain University, 2018, p. 40.
12. Mossadeq Adel Talib, (2017), "Constitutional Drafting, first edition", Al-Sanhouri Library, Beirut.

13. Muhammad Al-Khasawneh, (2014), "Public Finance Theory and Practice, first edition", Dar Al-Manhaj for Publishing and Distribution, Amman.
14. Muhammad Sharif Ahmed, (1979). "The Theory of Interpretation of Civil Texts, a comparative study between Islamic and civil jurisprudence", PhD thesis, College of Law, University of Baghdad, p. 157.
15. Samer Muayyad Latif & Hassan Salman Rashid, (2019), "The authority of the Iraqi Parliament to approve the draft general budget law", Research published in Resalat al-Huqouk magazine, University of Karbala, College of Law, Issue 2, Volume 11, p. 52.