



PARLIAMENTARY OVERSIGHT OF ADMINISTRATIVE ACTIONS IN THE PARLIAMENTARY SYSTEM

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Abstract:

Parliaments perform a number of functions that vary in their scope and range from one country to another, depending on the prevailing constitutional framework, the distribution of government powers, and the level of democratic development, the strength of the parliament, and the capabilities of its members. Respecting popular governance and adhering to the requirements of various democratic principles, contemporary constitutions in political systems have established the principle of subjecting the actions of public administration to parliamentary oversight. This research paper aims to shed light on the legal system upon which this type of oversight is based, as well as the most important foundations and objectives it relies on.

Keywords: Parliaments; Administrative Actions; Parliamentary System.

INTRODUCTION:

Britain is considered the cradle of the parliamentary system and its birthplace. It spread from there to most Western European countries, except for Switzerland with its council system. Many European, Asian, and African countries also adopted the parliamentary system. The modern model of the parliamentary system is considered to be France.

Some scholars have defined the parliamentary system as "a system that aims to establish a balance and cooperation between the legislative and executive powers, so that neither dominates or controls the other. This is the essence of the parliamentary system. If separation with cooperation is not achieved, then the system is not parliamentary despite the existence of a parliament."¹

This system is characterized by promoting a spirit of cooperation between the legislative and executive powers, while each maintains its independence. Under this system, parliaments perform a number of functions that vary in scope from one country to another, depending on the prevailing constitutional framework, the distribution of government powers, the level of democratic development, the strength of the parliament, and its capabilities. One of the most important of these functions is parliamentary oversight, which some consider the essence of political oversight of administrative actions. In the parliamentary system, this is carried out through several methods and tools. History has witnessed all tools of parliamentary oversight: questioning, interrogation, parliamentary investigation committees, and criminal liability for administrative actions. This leads us to raise the following question: To what extent are the tools of parliamentary oversight effective in the parliamentary system?

To answer this problem, we divided the plan into two axes:

The first axis: The nature of parliamentary oversight

The second axis: Mechanisms of parliamentary oversight of the administration in the parliamentary system



THE FIRST TOPIC: The Nature of parliamentary oversight

The Nature of Parliamentary Oversight in its broad sense means the set of powers used by the state in order to ensure respect for the law by the organizations subject to oversight or to protect the public interest in this area.

In contrast to this definition, which gave a broad meaning to parliamentary oversight, there have been efforts by constitutional law scholars to develop a definition of parliamentary oversight,² which we will discuss below:

Section One: The Concept of Parliamentary Oversight

Subsection One: Definition of Parliamentary Oversight Constitutional doctrine did not pay attention to defining parliamentary oversight, despite it being one of the oldest functions of parliaments in the world. This is reflected in the scarcity of definitions provided by other constitutional scholars. The first was the researcher "Pierre", who indicated that it is one of the oldest functions of parliaments and aims to impose restrictions on the executive authority.

The second was "Harris", who indicated that it is the process of examining laws after their legislation to show the extent of their implementation and whether they achieved the desired results, and what are the appropriate procedures to correct errors in this regard.³

Some scholars have defined parliamentary oversight as "the parliament's oversight of the executive powers granted to it constitutionally, as it represents and expresses the people."⁴

Dr. HamedRabie defined it as a "form of control".⁵What can be criticized about this definition is that it does not recognize the existence of any type of parliamentary oversight in presidential political systems, despite the fact that some of those systems may witness degrees far exceeding what exists in parliamentary systems.

The definitions generally characterize parliamentary oversight as:

- One of the core historical functions of parliaments
- Aimed at scrutinizing and restraining the executive branch's actions
- Ensuring proper implementation of laws and achievement of intended results
- Enabling corrections whenneeded
- Parliament exercising this oversight as the representative of the people
- A form of control over the executive by the legislative branch

While varying in their exact wording, the definitions converge on parliamentary oversight being the legislature's mechanism to monitor, review andcheck the activities of the executive government to ensure accountability and adherence to laws/intentions.

Subsection Two: Foundations of the Parliamentary System

The existence of a parliament in a particular system is not an indication that it is a parliamentary system. Nor can a parliament with its powers parallel to the executive authority be considered a criterion for the parliamentary system. For example, the US Congress has strong powers that exceed those of parliament in the parliamentary system, yet the American system is presidential. So what is the defining criterion for the parliamentary system?

Answering this question requires us to look at the basic elements on which the parliamentary system is based, which are:

- The existence of a parliament elected by the people on a democratic basis, whether through a direct or indirect electoral system.



- The parliament exercises multiple powers defined in the constitution, where the parliament has the right to set the general policy of the state, direct questions and interrogations to ministers, form investigation and oversight committees over the executive authority's actions and it can withdraw confidence from the government or one of its ministers.
- The parliament exercises its function in one or two chambers for a constitutionally defined period.
- A member of parliament represents the nation as a whole in accordance with the theory of national sovereignty on one hand, and on the other hand represents the electoral district in which they were elected in accordance with the theory of popular sovereignty.
- The executive authority is based on the principle of duality and bipartition between two bodies: the head of state and the government :⁶

1. The Head of State: The supreme head of the executive authority in the parliamentary system, with an important moral role, especially in democratic countries with a parliamentary monarchy system, as the king enjoys everyone's respect. This moral role played by the head of state is important and influential in governing, as the principle is that it aims to achieve the public interest and meet the desires of the people.

The head of state in the parliamentary system is often devoid of effective powers.⁷ However, the moral role they play has led some constitutional scholars to consider them the driving force behind the parliamentary system.

The parliamentary system is based on the principle of non-responsibility of the head of state, resulting in their inability to act alone. It has become commonplace among the English to say "the king cannot act alone", because the head of state in the parliamentary system has only nominal powers or authorities, while the actual powers fall under the jurisdiction of the responsible ministers. Accordingly, their signature on all actions related to state affairs must follow the signature of the prime minister, minister, or concerned ministers, meaning they approve of this action, and they bear responsibility for it. Thus, the general prevailing rule in the parliamentary system is that the head of state does not assume actual executive powers, and therefore bears no political responsibility, whether a king or president.⁸

This rule entails two consequences: First, it is not permissible to criticize the head of state due to their lack of responsibility, and because the ministry is responsible. Second, the signature of the prime minister and the relevant minister is required alongside the head of state's signature, because the orders issued by the latter do not absolve the ministry of responsibility.⁹

2. The Government this is a body consisting of its head, which is given various titles depending on the choice adopted by the state, such as prime minister, head of government, or first minister.

The ministers are united in a single program that they defend under the direction of the head of state and the first minister, each striving to implement a specific program approved by parliament.

The ministers are usually proposed by the prime minister or first minister, and approved and appointed by the head of state. Each party obtains a number of ministerial portfolios proportional to its share of the majority of seats in the elected parliament.

The government exercises the executive function under the supervision of parliament and may participate in legislation by proposing draft laws to parliament.¹⁰

The Second Requirement: Objectives of Parliamentary Oversight

The objectives of parliamentary oversight are characterized by integration at times and conflict at other times, due to the multiplicity of those carrying out oversight and the divergence of their goals and political affiliations. In this regard, it is noted that the desire of members of parliament to implement the constitution and purify laws to keep pace with development is a goal that goes hand in hand with the goal of monitoring spending and the goal of confronting bureaucracy. On the contrary, these goals conflict with any personal ambitions that a member of parliament seeks from his membership within the legislative body.



It is well-established that the nature of the objectives of parliamentary oversight varies according to the nature of the political system (democratic or totalitarian). In this regard, it is noted that in democratic systems, those carrying out parliamentary oversight (if present) tend to achieve personal goals, compared to any other goals.

In light of this, we can divide the objectives of parliamentary oversight into objectives aimed at achieving the public interest, and objectives aimed at achieving the private interest of the party carrying out the oversight, which we will see in the following two branches:

The First Branch: Objectives for the Public Interest The objectives that achieve the public interest are as follows:

A- Objectives related to implementing the constitution, laws, and revising legislation: The party carrying out the oversight seeks to emphasize the implementation of the constitution and laws in the state, with the aim of achieving the public interest, or proving the failure of legislation and demanding new legislation.

B- Confronting bureaucracy: Parliamentary oversight of the executive authority aims to confront bureaucracy and the administration subject to the executive authority, and the importance of this goal stems from the desire to prevent administrative violations of established policies and not taking a stance towards the grievances that citizens have at the hands of the administration.

C- Monitoring spending: The general focus of parliamentary oversight on spending is the oversight of the state's general budget, which includes revenues and expenditures for a year, as well as oversight of economic and social development plans, which aim to achieve growth rates over long periods of time.¹¹

D- Oversight of foreign and defense policies: Parliamentary oversight sometimes aims to stand on all aspects of the state's national security, foremost of which are foreign and defense policies.

Here is the translation to English:

The Second Branch: Objectives for Private Interests These private objectives of parliamentary oversight are as follows:

A- **Achieving some partisan interests or goals:** Those carrying out oversight often aim to achieve partisan interests or goals. This occurs under political systems in which political parties have status and influence in society. There is no doubt that there are main partisan goals that those exercising parliamentary oversight seek to achieve, in whole or in part, during the exercise of their oversight role. These goals are as follows:

- Supporting or implementing a specific ideology, declared in the political program on the basis of which the party nominated the member exercising oversight, even if this contradicts the member's personal desires.
- Seeking to compete with other political parties within the parliament, in order to gain more popularity and voters' votes in subsequent elections, and increase membership in the party to which they belong.
- The desire of the person exercising parliamentary oversight to achieve heroism or a prominent position in a specific field within the parliament, which would enable them to become a major party leader in subsequent internal elections within the party.
- The person exercising parliamentary oversight seeks, through a distinguished oversight role, to achieve an interest for which they are represented in supporting one of the political parties for them in subsequent elections.

B- **Achieving some personal interests or goals:** Many members of parliament desire, through exercising oversight over the executive authority, to achieve personal interests or goals, as follows:

1. Inquiring about matters they are personally unaware of or doubtful about, which the government, with the information it possesses or is informed by those exercising oversight, can clarify.



2. A member of parliament seeks, through their persistent membership, to meet the needs of the constituents of the electoral district in order to gain more popularity within that district.¹²
3. Some members of parliament exercise an oversight role over the executive authority in exchange for receiving a service in return from the person on whose behalf the oversight request is made.
4. Members of parliament engage in oversight activities in pursuit of gaining benefits directly from the government. This process succeeds when a member of parliament possesses valuable information that could shake the foundations of the government or one of its ministers.¹³

Second Subtitle: Mechanisms of Parliamentary Oversight over the Administration in the Parliamentary System

The legislative authority also exercised works in the field of the executive authority, indicating cooperation and achieving a balance between these two authorities.¹⁴ It has the right to direct questions to ministers, interrogate them, the right to form special committees from among its members to conduct investigations with ministers on some issues and matters that warrant that, and the right to hold ministers politically accountable, withdraw confidence from them, and force them to resign.¹⁵ We will try below to address the most important of these works in some detail:

The First Requirement: The System of Questions and Interrogations

Parliamentary questions and interrogations are considered among the most important oversight tools that parliament has towards the government, which enables it to follow up on governmental activity from various aspects in an official and documented manner:

The First Branch: Questions

There is no doubt that the system of parliamentary questions as an oversight mechanism was introduced for the first time in the rules of the French National Assembly in 1876, where the draft rules of the National Assembly stipulated that oral questions would be submitted during the first half hour of the start of the session, following the English approach in setting a time for questions. However, the objections and discussions of the council members led to the amendment of the proposed text, so that questions could be submitted at the beginning or end of the session.¹⁶

A question refers to the inquiry and clarification requested by any member of parliament from the minister regarding a particular matter.

The question is a bilateral relationship between a member of parliament and the minister, with no other member of parliament intervening. Therefore, it is a personal right of the Member of Parliament, who may waive it or turn it into an interrogation if not convinced by the minister's answer to the question.¹⁷

Questions are considered among the privileges that parliament has in directing the government. Every Member of Parliament is allowed to submit a question to one of the ministers, but it is required that this right be exercised individually, in order to distinguish the right of questioning from other forms of oversight. If a group of members sign a letter requesting certain information, it turns it from a mere question into an interrogation directed against the minister.¹⁸

And several conditions must be met for questions to be accepted, and these conditions are divided into formal and substantive conditions:

First: Formal Conditions

1. The question must be written: This condition is required for both written and oral questions, as stipulated in the rules of the French parliament.
2. Concise phrasing of questions: The principle is that questions must be stated in concise terms that clearly indicate their intent.



Second: Substantive Conditions

1. The question must be free from inappropriate expressions, i.e., written questions must be drafted in a manner that does not contain personal accusations against others identified by name. This is the wording currently used in the rules of the French parliament.
2. The question should not lead to harm to the supreme interest of the country, such as revealing certain confidential information or raising a dispute or conflict with another country.
3. It is worth mentioning that the right to question is not an absolute right but rather a restricted one, as there are subjects that cannot be the subject of a question.¹⁹

The Second Branch: Interrogation is considered more serious than a question. It is not a request for knowledge, an opinion, or reaching a truth, but rather an accountability or clarification that implies an accusation against the ministry or one of the ministers, which could lead to a motion of no confidence in the minister or the ministry as a whole.

Although some constitutions have included provisions for interrogation along with questioning, they generally provide it with the guarantees that must surround its use so that parliaments do not resort to it excessively.

Among the most important of these guarantees is that it is not permissible to discuss the interrogation before a certain period, usually eight days, has elapsed since it reached the minister, unless the situation is urgent and the minister agrees to shorten the period.

The interrogation is not a specific relationship between a member of parliament and the minister; rather, all members of the council may participate in it. Moreover, if the interrogator withdraws their interrogation, the council may continue to consider and discuss it if one of its members adopts it. The interrogation may ultimately lead to a motion of no confidence in the minister or the entire ministry.²⁰

And just as Britain is the cradle of the question, where the right to question first emerged, France is the cradle of interrogation.

The second axis: Mechanisms of parliamentary oversight of the administration in the parliamentary system

First Axis: The Nature of Parliamentary Oversight in its broad sense means the set of powers used by the state in order to ensure respect for the law by the organizations subject to oversight or to protect the public interest in this area.

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The Second Axis :Mechanisms of Parliamentary Oversight over the Administration in the Parliamentary System

The legislative authority also exercised works in the field of the executive authority, indicating cooperation and achieving a balance between these two authorities.³³ It has the right to direct questions to ministers, interrogate them, the right to form special committees from among its members to conduct investigations with ministers on some issues and matters that warrant that, and the right to hold ministers politically accountable, withdraw confidence from them, and force them to resign.³⁴ We will try below to address the most important of these works in some detail:

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interrogation, the council may continue to consider and discuss it if one of its members adopts it. The interrogation may ultimately lead to a motion of no confidence in the minister or the entire ministry.³⁹

And just as Britain is the cradle of the question, where the right to question first emerged, France is the cradle of interrogation.

THE SECOND TOPIC: Investigation and Holding Administrative Officials Accountable

It is well-established that France recognized two important mechanisms as means of oversight over the actions of the administration: the formation of parliamentary inquiry committees and the ability to hold administrative officials criminally liable.

The First Branch: Parliamentary Inquiry Committees

First: The Relationship between the Formation of Parliamentary Inquiry Committees and Judicial Investigation

The question arises regarding the relationship between the formation of parliamentary inquiry committees and judicial investigation, concerning the extent to which the existence of a judicial investigation affects the parliament's right to form an inquiry committee on the same subject referred to the public prosecution.

A - The Effect of an Existing Judicial Investigation on the Parliament's Right to Form an Inquiry Committee

Some have argued that the existence of a judicial investigation does not prevent the parliament from forming inquiry committees on the same subject, due to the different roles played by the judicial and parliamentary authorities. The public prosecution conducts an investigation to ascertain whether there is a crime in the matter, while the parliamentary inquiry committee conducts an investigation into the political aspect only, without addressing the legal aspects.

Such an opinion cannot, of course, be accepted because there is an overlap between the political and legal aspects. How can the parliament investigate the political aspects of a case of administrative corruption in an administrative body without extending the investigation to examining the aspects of material gain from it?⁴⁰

In reality, these cases are considered an exception to the rule, and some parliamentary investigations have been

limited to a narrow scope as much as possible to avoid conflicting with ongoing judicial investigations.

Second: The Effect of Referring the Matter to Judicial Investigation on the Continuation of the Parliamentary Investigation

This case is the opposite of the first one, where the referral to the public prosecution occurs after the formation of the parliamentary inquiry committee.

Despite the continuation of parliamentary inquiry committees in their work in France despite the referral of the matter under judicial investigation, there is no doubt that the justification for this, in our opinion, is that it is not permissible, in principle, to prevent the parliament from using its means of oversight over governmental activity, including the formation of inquiry committees, merely because the government has referred the subject of the parliamentary investigation to the judiciary. If we were to adopt this logic in an absolute sense, it would lead to preventing the parliament from exercising its oversight powers definitively and eliminating its important role in this area.⁴¹

The Second Branch: Establishment of Political Responsibility for Administrative Actions

It is well-established in the advanced French parliamentary system that the President of the Republic is not politically accountable, as there is no constitutional procedure to initiate political responsibility of the President of the Republic to force his resignation.

The traditional rule in this regard is that, from a legal standpoint, neither the parliament nor the people can force the President of the Republic to resign. Since 1873 until the year 2000, the President of the



Republic was elected for a full seven-year term, and since the constitutional amendment in 2000, for a five-year term, with the possibility of re-election indefinitely at present.

Therefore, it is not possible to overthrow the President of the Republic through a vote in parliament.

As a necessary consequence of this principle, it is incumbent upon the presidents of the two parliamentary chambers - the National Assembly and the Senate - to object to any discussion raised about the person of the Head of State.⁴²

As for the political responsibility for administrative actions regarding the Cabinet (in France), there are two means of raising this responsibility: the motion of no confidence and the motion of censure:

First: Motion of No Confidence If the penalty for civil liability is compensation, and for criminal liability is punishment, then the penalty for political responsibility is resignation.

Political responsibility in the parliamentary system is established for the minister or the entire cabinet. Therefore, it can either be individual, falling solely on the minister, or collective, falling on the entire cabinet as a result of the actions of this cabinet or the direct actions of the Prime Minister as the head of this body.

Ministerial responsibility is determined by the withdrawal of confidence from the parliament. If the no-confidence motion was directed against the minister, they must resign. However, if it was directed against the entire cabinet or the Prime Minister, the entire cabinet must resign.

If ministerial responsibility is considered the greatest evidence of the relationship that binds the legislative authority to the executive authority, then this responsibility is often determined only before the elected council, not the other appointed council, if the political system adopts a bicameral parliamentary system.⁴³⁴⁴

Second: Motion of Censure The motion of censure is defined as "one of the important oversight mechanisms recognized by the advanced parliamentary system in France, through which members of the National Assembly can call for a council vote on a decision to overthrow the government, by condemning its actions or accusing it of political responsibility."⁴⁵

It is worth noting that the motion of censure is made in two ways:

A- The First Method: The motion of censure that is made on the initiative of the deputies themselves, which some have called the independent, offensive, or self-initiated motion of censure.

B- The Second Method: The motion of censure that is not made on the initiative of the deputies themselves, but in response to the government's linking of confidence with the approval of a draft law or legal text.⁴⁶

CONCLUSION:

We conclude this research paper by stating that the tools of parliamentary oversight over the administration's actions in the parliamentary system ensure preventing the increase of the executive authority's shortcomings in its actions through various oversight tools, such as questions, interrogations, the right to conduct parliamentary investigations, as well as criminal and political responsibility for administrative actions. Despite this, there must be an increase in the activation of parliamentary oversight tools over the administration's actions, on the one hand, and on the other hand, there is a necessity to reduce the restrictions imposed on the use of oversight tools.

Here are some possible recommendations:

1. Strengthen parliamentary committees' investigative powers: Grant parliamentary inquiry committees more robust legal authority to compel testimony, obtain evidence, and access necessary information from the executive branch. This will enhance their effectiveness in conducting thorough investigations.
2. Establish clear protocols for parliamentary questioning: Develop standardized procedures and timelines for ministries to respond to parliamentary questions, ensuring timely and substantive answers. This will improve accountability and responsiveness from the executive.



3. Promote transparency in oversight processes: Ensure that parliamentary oversight proceedings, such as committee hearings and debates on motions of censure, are open to the public and media scrutiny whenever possible. This will foster transparency and public trust in the oversight system.
4. Provide adequate resources for oversight functions: Allocate sufficient financial and human resources to support parliamentary oversight activities, including research staff, legal experts, and administrative support. Well-resourced oversight mechanisms are essential for effective scrutiny.
5. Enhance parliamentary expertise on specialized topics: Establish specialized parliamentary committees or advisory bodies to develop expertise in complex policy areas like finance, technology, and national security. This will enable more informed and robust oversight in these critical domains.
6. Foster cross-party cooperation on oversight: Encourage a culture of bipartisanship and cooperation among political parties when exercising oversight responsibilities. This will lend greater credibility and effectiveness to oversight efforts, transcending partisan interests.
7. Promote public engagement in oversight: Develop mechanisms for citizen participation and input in parliamentary oversight processes, such as public hearings or online platforms for feedback. This will ensure that oversight activities reflect the concerns and interests of the broader public.
8. Continuous review and reform: Regularly review and update the legal framework and practices governing parliamentary oversight to ensure they remain relevant, effective, and aligned with evolving democratic standards and societal needs.
9. By implementing these recommendations, the French parliamentary system can further strengthen its oversight capabilities, promote accountability, and reinforce the system of checks and balances essential for a healthy democracy

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Footnotes:

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