

THE IMPORTANCE OF SWEARING-IN FOR TAKING A SEAT AS A MEMBER OF THE HOUSE OF REPRESENTATIVE IN IRAQ

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ABSTRACT

After the ratification of the Supreme Federal Court on the final results of the parliamentary elections, the members of the House of Representatives is sworn in as a constitutional requirement that should be avoided by the MP before starting to exercise its functions, whether legislative or regulatory, but may resort to some deputies to refrain from performing the constitutional oath, To the membership of the Council and at the same time unable to exercise their parliamentary functions for not performing the said oath, the Constitution requires the deputy to be sworn in before the exercise of parliamentary functions and the abstention of the right of the deputy to the inability to exercise the functions of The member of the Chamber of Deputies is a representative and deputy of the people. He must perform his parliamentary duties in the best way and avoid all that directs him to perform his duties properly. The deputy abstains from performing oaths and evades them at all times. Is expected of the representatives of the people and demanding their rights, and therefore our research came in the importance of the oath by the member of the House of Representatives and the extent of the impact of its failure to perform on the membership of the Council, and we do not aim through this research to deepen the intent of the constitutional right as much as we aim to Statement of the importance of performance Limin and the constitutional consequences of this through the analysis of texts on the subject and interpretation and evaluation and study the problems found to find solutions to them.

Keywords: Swearing, Taking a Seat, Member, Representative, Iraq

INTRODUCTION

The Constitutional Oath has become an important part of the constitutional constants of the states that are carrying out important constitutional posts before assuming office. The constitutional oath has traditionally been taken on the basis of a constitutional text or a constitutional convention in force. The oath is not limited to holding sovereign positions. The constitutional Oath is also exercised in some non-governmental bodies as well as trade unions. The lawyer can practice the profession of law and lead the department before the competent authorities and consequently obtain the identity of practicing the profession¹.

The Constitution of Iraq for 2005 guarantees the members of the House of Representatives and the President of the Republic² as well as the Prime Minister and Ministers³ to take the constitutional oath. The constitutional right is one of the necessary protocols for holding positions in many countries. On the right performed by the head of state or persons who take over the public

authorities then called the constitutional right. The legal right is provided for in the laws of the state, as provided in the rules of procedure of the parliament or any other law⁴.

The Importance of Making an Oath

It's necessary to know the effect of the oath by the MP on the acquisition of membership status, and a statement as to whether the swearing of the oath is considered as a manifestation of the membership status or its origin. Is the elected team for the membership of the House of Representatives from the date of ratification of the election results by the Federal Supreme Court or the date of the performance of the constitutional oath? (Rahman, 2017).

In Iraq, the rules of procedure of the Chamber of Deputies provide that: (The elected candidate shall be a member of the Council and shall enjoy all the rights of membership from the date of ratification of the election results and shall assume his functions after the swearing in of the constitutional oath⁵). Under this provision, the elected candidate is a member of the House of Representatives once the election results are approved by the Federal Supreme Court⁶ and enjoy the rights resulting from membership in the House of Representatives after the ratification of the mentioned but cannot exercise its legislative and oversight functions only after the swearing-in, (A) The elected candidate shall be a deputy in the Council and shall enjoy all his parliamentary rights except for the material from the date of ratification by the Federal Supreme Court on the final results of the general elections (Al-Makeni, 2014). A presidential decree shall be issued⁷). Constitutional law⁸ itself has the text of the following: The MP in charge of public service and a full-time prosecutor and enjoy financial rights arising from them, starting from the date he was sworn in⁹. Under the two texts above, the MP after the ratification of the Federal Supreme Court on the results of the elections and the issuance of the Republican decree enjoys all the parliamentary rights, but the material rights that depends on the enjoyment of the MP to the performance of the constitutional right, and these texts came as a logical result of the text of Article 50 of the Iraqi Constitution, the constitutional right is the deputy and not the candidate who won the election¹⁰.

However, the decision of the Federal Supreme Court indicating the son of the elected deputy after the ratification of the Federal Supreme Court and after the swearing-in of the constitutional oath, has been supported by the Federal Court decision this other decision, which indicated that the MP before the commencement of his oath work according to its origins based on Article 50 of the Constitution She pointed out that before taking the oath, he remains only a winner of the general election process does not acquire the status of MP¹¹.

However, the decision of the Federal Supreme Court is criticized because it contravenes the text of Article 50 of the Constitution, on which it was based. Article 50 states: "The member of the Chamber of Deputies shall be sworn before the Council before he begins his work ..." The Constitution through this article clearly shows that the member of the House of Representatives is the sworn in and not the elected, that is, the Constitution counted deputy and not elected before his oath of constitutional right, he did not say the winner of the elections to be sworn in, the text of the above-mentioned Constitution is clear and unambiguous and can Understandably it is clear that the elected candidate is considered a deputy in the Iraqi parliament as soon as the Federal Court approves the results of the elections and before the constitutional oath (Zaghir, 2017). Even the provisions of the constitution obliging the president, the prime minister and the ministers to take the constitutional oath.¹²

Based on the principle of the supremacy of the constitution and the occupation of the constitutional rule, the supreme position in the hierarchical hierarchy of the hierarchy of legal rules, it is not permissible to contradict the ordinary rules of administrative and judicial laws and decisions with the provisions of the constitution (Mahmoud, 2014). The legislative and judicial authorities may not make laws and judicial decisions contrary to constitutional provisions. Was implicitly disguised under the guise of organization, this work is a challenge to the constitutional rules, which expose them to invalidity.¹²

It is clear to us from the foregoing that the performance of the constitutional oath is not related to the acquisition of parliamentary membership but relates to the direct member of the Iraqi Council of Representatives for his parliamentary duties, which begins after the inauguration of the constitutional oath, the resort of the Iraqi legislator to separate between the date of acquisition of the membership of the House of Representatives and the start of the performance of parliamentary functions after the swearing - He has a moral motive to urge a member of Parliament to perform his duties faithfully, faithfully, objectively¹³, and in the direction of the Iraqi legislator. This is not a recent matter. The Iraqi Basic Law of 1925 also stipulates that deputies and dignitaries must perform the oath before commencing their duties (Iraqi Basic Law, 1925).¹⁴

It should be noted that the acquisition of parliamentary membership before the swearing in has several consequences:

Enjoy the Member of the House of Representatives Immunity before the Oath.

As we know that the MP enjoys after the ratification of the Federal Supreme Court on the results of the elections and before the performance of the constitutional right of all parliamentary rights except material rights, as shown by the law of the Iraqi¹⁵ Council of Representatives and that under the rules of procedure of the House of Representatives, the elected candidate in addition to gaining membership of the Council from the date of ratification On the results of the elections, he enjoys all the rights of membership as of the said date¹⁶.

It is obvious that the MP does not enjoy material rights until after the swearing-in. After his performance, the deputy can carry out his parliamentary duties. The deputy has no material privileges except after performing the right. And it would have been more appropriate for the same result to have enjoyed immunity (Ali, 2018).

There is a view that it is wise to enjoy the immunity before the oath even if he cannot carry out his duties only after the oath, to protect the member of Parliament from the Kid either from individuals or by the executive authority, the deputy is exposed to this Kid either before the oath or After that, directing accusations and instituting cases against a member of the House of Representatives may prevent him from performing this oath, which necessarily entails preventing him from running his parliamentary duties¹⁷. In other words, the temporal scope to acquire parliamentary immunity starts from the date of announcing the election results¹⁸ (Ali, 2018). Therefore, the purpose is the parliamentary immunity should be conducted with the parliamentary performance of parliamentary functions, whether substantive or procedural parliamentary immunity and the deputy must enjoy immunity when he began to exercise it. For his parliamentary work, *i.e.*, after his performance of the constitutional right and not before it. If the deputy did not lead the right and abstained from performing it, and therefore not starting to perform his parliamentary duties, it is better not to enjoy immunity. While we see that the law provides for the enjoyment of all the rights

of the MP except the material, once the ratification of the election results and accordingly even the deputy abstain from the oath is still enjoying parliamentary immunity no matter how long it is to abstain. To remove this confusion, it is clear that the MP enjoys all his rights except material rights and parliamentary immunity as soon as the election results are ratified and he enjoys them after the constitutional oath (Al-Bayati, 2015).

It is not Permissible to Combine the Membership of the Council of Representatives and Any Other Work or Position:

The Constitution of 2005 states in Article 9/VI that: "The membership of the Chamber of Deputies and any other official work or office may not be combined. The Law of the House of Representatives is similar to the text of the Constitution above¹⁹. The deputy must abandon any other position in the event of winning the parliament and once the Federal Supreme Court ratified the results of the elections, *i.e.*, before the oath, and we find that there are deputies abstain from the constitutional oath in the first meeting, hoping to obtain positions of sovereignty or even choose between the post Which they occupy and membership of the House of Representatives, but once membership is gained, the member of the House of Representatives must renounce the post or remain in custody with the announcement of his withdrawal from the House of Representatives because staying suspended between them is not permissible (Abbas, 2013).

As well as the internal system of the House of Representatives prevents the combination of membership of the House of Representatives and the membership of the legislative councils in the provinces and provincial councils and shows that the parliament to choose the membership in one of the two parties and if not elected is considered a member of the House of Representatives only²⁰. However, limiting the choice of membership to the legislative councils in the provinces and the membership of the provincial councils and did not include other positions, so here we propose to add a text to the law of the House of Representatives shall choose the member between the membership of the Council and the other post whatever, and choose one during a specific period, Is not more than two weeks from the date of ratification of the election results and if he does not, he shall be considered an elected member of the House of Representatives at the end of the specified period and thus does not allow the member of the House of Representatives who holds a position such as the position of governor or other positions to circumvent the law and delay in choosing between the membership of the Council and the post, In it. We also prefer to include a text that mainly prepares candidates for senior positions in the elections as heads of provincial councils and their members, governors and deputy ministers unless they resign from their positions before the nomination process, because the holders of these positions may have an impact on voters in the institutions in which they exercise their jobs and perform their duties was better To provide a text that requires their submission to resign if they want to be nominated so as not to subject the voters to the influence and authority of the holders of these positions²¹.

Refrain from Performing the Constitutional Oath and the Consequences thereof

We have explained above that the national team is a member of the House of Representatives as soon as the Federal Supreme Court ratified the election results and before the swearing in, the failure to perform the constitutional oath by the MP depends on his inability to exercise his parliamentary functions and does not depend on the performance of the right of

membership in the House of Representatives, The constitution enables the MP to exercise his parliamentary functions and to enable him to enjoy his parliamentary material rights (Al-Ajrama, 2015).

But what if the MP did not lead the oath?? In Iraq, the law of the House of Representatives and its composition, as well as the rules of procedure of the Iraqi Council of Representatives have shown the need to perform the constitutional oath by a member of the House of Representatives, as he cannot take up his duties and exercise his work before being sworn in, but what if the parliamentary did not lead this section after the ratification of the results The election?? (Iraqi Council, 2007)

We note that some constitutions of the world have tightened on the subject of swearing in, such as the Irish Constitution, which, after putting into place the right formula that the judges must perform in order to start their professional life²², that the judge who refuses or ignores the oath is abdicated²³. Who are committed to the constitutional oath of the President of the State and the members of the Government as well as the deputies, in the event that none of those mentioned in the oath of office is removed from office²⁴, which indicates the importance of the performance of the constitutional oath which entails the violation of serious legal effects such as evacuation of those who abstain from performing from their positions (Al-Khatib, 2011).

In Iraq, deputies who abstain from the constitutional oath after the ratification of the Federal Court on the results of the elections may not enjoy the privileges of material and do not exercise parliamentary functions and yet consider the deputies and evidence that they remain the occupants of the parliamentary chairs, despite abstaining from the constitutional oath²⁵, To the House of Representatives because of his failure to perform the right, so we find the need for a legal text obliging deputies to take the constitutional oath 37 within a specified period during which he must take the oath, although the law of the House of Representatives has required the deputy to take the constitutional oath in the first session²⁶ of In the event that the deputy abstains from attending the first session, he is absent from the session only²⁷, and there is no provision requiring him to take the oath in subsequent sessions (LHR, 2018).

Despite the provision in the law of the House of Representatives shows that the Council to dismiss the MP if exceeded the absence without a legitimate excuse more than one third of the sessions of the Council in the legislative term one²⁸, it can be said that the deputy abstain from the oath is not entitled to exercise his legislative functions and therefore is not entitled to attend the meetings and If one third of the sessions of the Legislative Council is absent, the House of Representatives may dismiss him, but this provision is not sufficient to deal with the case of the deputy's abstention for the following reasons:

1. The absence of a deputy must exceed one third of the sessions of the House of Representatives to have the right to dismiss him.
2. The House of Representatives here has the option of dismissing the MP or not. The law did not oblige the Council to dismiss the MP, but he gave him full freedom to dismiss or not because it stipulated that (the Council shall dismiss the MP).

If we want to rely on this text, the member of the House of Representatives remains a deputy in the event of abstaining from the constitutional oath until he is fired if his absence exceeds one-third of the sessions of the Legislative Council, from 11 to 12 meetings²⁹, and the Council here the full freedom to resort to dismissal or not, Before the House of Representatives dismissed a deputy because of absence.

It is worth mentioning the implications of the MP's abstention from swearing in as follows:

1. The inability of the MP to exercise parliamentary functions, the Iraqi constitution linked the exercise of parliamentary functions to perform the constitutional oath by a member of the House of Representatives (Iraqi Constitution, 2005).
2. The legislator has the right to abstain from performing the oath of his material rights only. He indicated that the MP remains with all his rights, except the material ones, after the Federal Supreme Court ratified the election results and issued³⁰ a republican decree. And he begins to enjoy it after the swearing in³¹. It is clear from this that evens the deputy who, if he is sworn in, enjoys parliamentary immunity and this is a legislative gap that must be addressed (Al-Khafaji, 2018).
3. The parliamentary seat shall remain occupied in the name of the deputy who abstains from taking the oath and does not replace his last seat from the electorate. There is no provision prohibiting him from his parliamentary membership when he abstains from performing the constitutional oath.

It is clear from the above that the deputy who abstains from performing the oath remains a concern for the parliamentary seat. However, he is unable to perform the parliamentary tasks, which is detrimental to the governorate to which the MP belongs. It is preferable that the term be relatively short so as not to delay the deputy in the swearing-in, and in case of non-performance of the membership is considered null and replaces the last place of the elected reservists.

CONCLUSION

At the end of our research, and after we discussed the importance of the constitutional oath for the deputy and highlighted the shortcomings and weaknesses in the texts, it is necessary to refer to the most important findings we have and recommendations proposed, which can be summarized as follows:

RESULTS

1. The elected candidate is considered a deputy in the Iraqi parliament as soon as the Federal Court approves the election results and before the constitutional oath, based on the constitution, the internal rules and the law of the House of Representatives.
2. The decision of the Federal Supreme Court, which counted the deputy before the oath is just a winner of the general election process does not acquire the status of critic because it violates the text of Article 50 of the Constitution, which clearly states that the member of the House of Representatives is sworn in and not the elected candidate.
3. The text of the law of the House of Representatives, which shows that the Council to dismiss the MP if it exceeded the absence without a legitimate excuse more than one third of the sessions of the Council in the legislative term one is not enough to address the case of abstaining from the oath, because on this text remains a member of the House of Representatives Vice- If he fails to take the oath of office until he is sacked if his absence exceeds one-third of the sessions of the Legislative Council, ie 11 to 12 meetings. The Council here is the absolute freedom to resort to dismissal or not. The House of Representatives has never dismissed a deputy for exceeding the limits Allowed.

RECOMMENDATIONS

1. Parliamentary immunity must be conducted with the parliamentary performance of parliamentary functions. The deputy must enjoy immunity when he begins exercising his constitutional duties, *i.e.*, after his performance of the constitutional right, and not before it. He began to enjoy immunity after he was sworn in. The law provides for the MP to enjoy all his rights - including parliamentary immunity - except the material ones once the ratification of the election results so we find it necessary to have a legal provision explicitly states that the MP enjoyed parliamentary immunity only after the constitutional oath.

2. Deputies who abstain from taking the constitutional oath after the ratification of the Federal Court on the results of the elections may not enjoy the privileges of material and do not exercise parliamentary functions and yet consider the deputies and the evidence that they remain the occupants of the parliamentary chairs, despite abstaining from the constitutional oath has not been held accountable to a member of the Council Because of his abstention from taking the oath. No one replaced the abstaining MP from taking the oath of office from the reservists. Therefore, it is necessary to have a text stipulating that the deputy abstains from taking office within a specified period, and that his term should be relatively short. For two or three months so as not to delay the deputy in the oath, and in the event of non-performance of the right during the specified period is considered to be invalid and replace the last place of the two reservists.
3. Once elected, the national team must renounce any other position, or it may remain with the announcement of its withdrawal from the House of Representatives, because staying suspended between them is illegal, and we propose that a text be added to the law of the House of Representatives. The latter, whatever the case, that one of them chooses within a specified period, such as not exceeding two weeks from the date of ratification of the election results, and if he does not do, he shall be considered an elected member of the House of Representatives at the end of the specified period.

ENDNOTES

1. Dr. Ali Majeed al-Ukaili, Constitutional Right and Guarantees to Protect the Parliamentary Function, Arab Centre for Publishing and Distribution, Cairo, 1, 2018, p 52.
2. Article 71 of the Iraqi Constitution of 2005: (The President of the Republic shall be sworn in before the House of Representatives in the form provided for in Article (50) of the Constitution.
3. Article 79 of the Iraqi Constitution of 2005: (The President and members of the Council of Ministers shall be sworn in before the House of Representatives in the form provided for in Article (50) of the Constitution.
4. Dr. Avin Abdel Rahman, Legal Centre of the Member of Parliament - Comparative Study, Cairo, Arab Centre for Publishing and Distribution, 1, 2017, p 97.
5. Article 14 of the Rules of Procedure of the Iraqi Council of Representatives for the year 2007.
6. The Iraqi Constitution of 2005 in Article 93 also states the jurisdiction of the Federal Supreme Court in approving the final results of the general elections for membership of the Council of Representatives in paragraph 7.
7. (The President of the Republic calls the House of Representatives to convene by a presidential decree within fifteen days from the date of ratification of the results of the general elections ...). Article 54 of the Iraqi Constitution of 2005.
8. Article 4 of the Law of the House of Representatives and its Formations No. 13 of 2018.
9. Article 6/I of the Law of the House of Representatives and Formations No. 13 of 2018.
10. Article 50 of the Iraqi constitution begins as follows: (The member of the House of Representatives shall take the constitutional oath before the Council before he begins his work ...).
11. Iraqi Federal Supreme Court Decision No. 56/Federal/2011 on 28/2/2011.
12. Iraqi Federal Supreme Court Decision No. 140 and Consolidated 141/Federal/Media 2018/2018/12/23.
13. Article 71 of the Iraqi Constitution of 2005 states: (The President of the Republic shall be sworn in before the Chamber of Deputies in the form provided for in Article 50 of the Constitution.) Article 72 of the Constitution states: Constitutional provisions before the Chamber of Deputies, as provided for in Article 50 of the Constitution.
14. Dr.. Naaman Ahmad Al-Khatib, The Mediator in Political Systems and Constitutional Law, Dar Al-Thaqafa for Publishing and Distribution, Amman, I 7, 2011, p540.
15. Abdul Karim Zagir, Member of the Iraqi Parliament between dependence and independence, Basra Foundation for Printing and Publishing, Basra, 1, 2017, p. 87.
16. Article 51 of the Iraqi Basic Law of 1925 stipulates that: (Before the commencement of their work, deputies and dignitaries must swear before each council the oath of allegiance to the King, the maintenance of the Basic Law, the service of the nation and the nation and the performance of their duties).
17. Article 4 of the Law of the House of Representatives and its Formations No. 13 of 2018.
18. Article 14 of the Rules of Procedure of the House of Representatives for the year 2006.

19. Dr. Ahmed Ali Abboud Al-Khafaji, parliamentary immunity/comparative applied study, the Arab Center for Publishing and Distribution, Cairo, I 1, 2018, p155.
20. Abdul Karim Zagher, previous source, p. 235.
21. Article 8 \ First of the Law of the House of Representatives and its Formations No. 13 of 2018 stipulated the following: (No prosecution may be combined with any other official work or office).
22. Article 19 \ Second of the Rules of Procedure of the Iraqi Council of Representatives for the year 2007.
23. Dr. Wael Munther Al-Bayati, The Legal Framework for Pre-Parliamentary Elections, Comparative Study, National Centre for Legal Publications, Cairo. 1, 2015, p. 121.
24. (In front of God I pledge and declare sincerely that I will do as I can and as far as I can from my knowledge and authority as Chief Justice (or as the case may be) without fear or favouritism or bad faith toward anyone and that I will uphold the Constitution and laws, God guides me and supports me) -Constitution of Ireland, 1937, the courts, Article 34, 6/1.
25. (Any judge who declines or neglects to make such declaration as aforesaid shall be deemed to have vacated his office). Constitution of Ireland, 1937, the courts, Article 34, 6/4.
26. Nasser Al-Makeni, Islam and the Constitution/A Comparative Juridical and Juridical Study of the Relation of Religion to the State in Various Constitutional Systems, Tunis, Al-Atrash Complex for the Book of Competence, no edition, 2014, p.
27. Hassan al-Kaabi, First Deputy Speaker of the House of Representatives, called in the parliamentary session held on 15 \ 4 \ 2019 to speed up the winning members who did not take the oath of office in order to ensure the exercise of their effective role. News published on the official website of the Iraqi Council of Representatives on the website <http://ar.parliament.iq/2019/04/15>
28. Article 10 of the First Law of the House of Representatives and its Formations No. 13 of 2018.
29. Article 11 fourthly, previous source.
30. Article 11, F Third, previous source.
31. Article 22/I and III of the Rules of Procedure of the Iraqi Council of Representatives for the year 2007 states that: (The House of Representatives has an annual session with two legislative chapters, eight months, the first of which begins on March 1 and ends on June 30 of each year, the second on September 1 and ending on 31 The sessions of the Council shall be held at least two days per week and the Presidency may extend or specify them as necessary). An average of at least 34 meetings to be held in the same legislative term.

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