

The Right of Senate Members to Question the Government: An Appraisal of the Jordanian Constitutional System

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Questioning is one of the most dangerous means by which the legislature can control executive work in the parliamentary system. It can move the government or a minister toward political responsibility. The Jordanian Constitution gives each member of parliament, both in the Senate and the House of Representatives, the right to question government members. However, the government bears direct political responsibility only for questions in the Representatives, because the Representatives is elected by the people and can therefore depose the government. Questions in front of the Senate, on the other hand, inform the Prime Minister and the Speaker in result by writing. This raises the issue of the importance of Senate questions. This research proves their importance.

Key words: *question, parliamentary system, bicameral system, government political responsibility, Senate.*

Introduction

The 1952 Jordanian Constitution provides for a national legislature and monarch. Specifically, Article 25 and its amendments stipulate that: “Legislative power is vested in the National Council and the King, and the National Council consists of the Senate and Representatives”. The two forums of the Council balance jurisdiction in the area of legislation. As to control over the executive power, the Constitution authorises each Council member to question and interrogate government work, as a means of parliamentary control. That is despite of results varying, depending on which forum of the Council questions. If a question is in the Senate, the result will be to inform the Prime Minister and Speaker of the

Representatives of the question, without shifting the Government's political responsibility. Questioning in the Representatives however, will raise the political responsibility of the government or relevant minister, if errors or deviations are discovered in governmental performance. The government is directly responsible to the Representatives not the Senate, because the first is the primary forum of the Council elected by the people. That raises the issue of questioning in the Senate, namely its utility and importance. The present researcher will prove its importance, first by studying the questioning, and second by studying the questioning procedures and their result.

Importance of research: This research shows how important it is that Senate members have the right to question government members. It refutes the contrary view that diminishes its importance. In particular, it is possible that a conclusion reached by the Senate, through questioning, will be the basis for the Representatives to fix political responsibility on the government, if Senate questioning proves the existence of justified concerns.

Research object: This research studies questioning as one of the most dangerous means of parliamentary control over government work. It evokes the political responsibility of government, as well as examining the procedures of questioning, and proves the importance of Senate questioning, which is evidenced by the result.

Research problem: Despite the importance of questioning as a means of parliamentary control over government work, there is a wrong view which underestimates Senate questioning. The Senate can inform the Prime Minister and the Speaker of the House of Representatives in writing, without evoking the political responsibility of the government so strongly as to threaten the government's majority in the House, and thereby threaten its existence.

Research Methodology: The researcher follows an analytical approach, by studying the 1952 Jordanian Constitution and the procedures of the House of Representatives and Senate, concerning the right to parliamentary questioning, and its results.

The First Topic: What Is Parliamentary Questioning?

Although England is the home of the parliamentary system, adopted by Jordan, England did not know questioning as a means of parliamentary control; it was established in France (Ghanayem, 1998) then moved to Jordan and other parliamentary countries. Interrogation was decided for the first time under the French Constitution of 1791, and this remained in successive French constitutions until abolished in the Constitution of the Fifth Republic (1958), the current Constitution of France (Abu Younis, 2017).

According to Salam (1983) Parliamentary questioning is one of the most dangerous means of individual parliamentary control. It includes accusations against the minister or the government, preparatory to holding him the executive responsible for errors or omissions in governmental performance. Parliamentary questioning is usually the initial step that precedes the mobilisation of individual or collective political responsibility, and the withdrawal of confidence from a Minister or Government as a whole. This can be the case in the Representatives council, but in front of Senate the result will be different.

The researcher will try to study questioning, by defining parliamentary questioning in the first demand, and explain its conditions in the second.

The First Demand: Definition of Parliamentary Questioning

Parliamentary questioning is a constitutionally regulated means of accountability. Article 96 of the 1952 Jordanian Constitution (“the Constitution”) and its amendments stipulate that: "Each member of Representatives and senate councils may ask ministers questions and interrogations in any public matter, in accordance with the provisions of council system rules ...". However, the Constitution and its amendments do not define parliamentary questioning. Instead Article 133 of the Rules of Procedure of the Jordanian Representatives Council of 2013 define parliamentary questioning as to "... hold ministers or any one of them responsible for his conduct in public affairs". Article 94 of the Jordanian Senate's 2014 Rules of Procedure define questioning in a manner identical to Article 133.

Jurisprudential definitions of parliamentary questioning are many. Here we mention some definitions: Dr Ihab Salam defines questioning: “a fact-finding procedure relating to certain situations in a branch of executive authority, it takes place on the basis of questions exchanged from questioners or some members, offset by a minister’s or prime minister’s response to questions, it is aimed to evoke political responsibility against a government or any minister” (Jalal A, 1996).

Jalal Attia also defines the right to question: "The right of a parliamentary member to accuse the government and hold the whole or one of its members responsible for certain abuses or errors that have been committed or occurred, proven by an interrogator in front of Parliament by facts, documents and all evidence, so as to open the door for discussion in front of the Representatives council, aiming to evoke political responsibility against a government or a minister after hearing the government's defence to these accusations (Laila,1975, p 621).

In the opinion of the researcher the second definition of parliamentary questioning is the most accurate. It shows questioning to be an individual right enjoyed by each Member of Parliament. It includes accusing and holding the government, or any minister, responsible for

errors committed during activity by the government or practising ministers. That questioning is not merely a charge, but must be based on corroborative evidence. Since the questioning involves an indictment, the government or the minister must be given the opportunity to defend and respond to the charges against them. That clarifies that the result of questioning is to agitate the political responsibility of the questioned minister or government. If Parliament is not convinced by the government's defence, it may be useful to mention that parliamentary questioning is not a personal relationship between the questioner and the questioning minister (Sultan, 2008). Rather, questioning provokes a discussion in which all members of parliament have the right to participate (Abu Tabikh, 2017).

The Second Demand: Conditions of Parliamentary Questioning

The Procedural Rules of the Jordanian Representatives council of 2013 and the Jordanian Senate of 2014 stipulate a number of conditions which must be met, for parliamentary questioning to be acceptable and included in the agenda and discussion of the collective Council. This indicates the seriousness of parliamentary controls over power. The formal and objective conditions that must be met in parliamentary questioning are as follows:

First Section: Formal Conditions: Questioning must be deemed an individual right for each member of the Representatives and Senate; questions must be submitted to a minister or prime minister, where the questioner meets conditions, and the member of executive branch considers the first formal conditions (Abu Tabikh, 2017).

In addition, there are formal conditions which must be met in the questioning itself, namely:

First: The Questioning Must Be in Writing: The member of Council must submit the question in writing to the Speaker, not verbally. The wisdom of this condition is that questioning is a political accusation, therefore it must be written so the government can prepare an appropriate response and defend itself (Ahmad, 2011, p. 172). Members of Parliament will then be able to view the submitted questions. Paragraph (a) of Article 134 of the Jordanian Representatives council rules of procedure for 2013 stipulates: (A) A member wanting to question one or more Ministers must submit his questioning in writing to the President, stating the issues and facts addressed in questioning ..., this is stipulated in paragraph (a) of Article (95) of Jordanian Senate rules of procedure for 2014.

Second: Questioning Must Be Submitted to the President of Council: For questioning to be valid it must be submitted to the President of Council. It is not enough to send it by requesting a Parliament member to send it to a minister in question (Batekh, 1999, p 136). This condition is set out in paragraph (a) Article 134 of the rules of procedure of Jordanian

Representatives council for 2013, and paragraph (a) Article 95 rules of procedure for the Jordanian Senate council for 2014.

Third: Questioning Must Include a Specific Accusation against a Member of the Executive Authority: Questioning must include an accusation against a member of the executive authority to whom questioning was directed. It must allege a particular failure or deviation, in respect of acts or facts attributed to any of them. Also, it must be based on specific facts and subjects, articulating the violation, reasons and evidence on which the question is based. Inadequacy in this condition makes an accusation in a questioning statement without evidence. This condition is set out in paragraph (a) of Article 134 rules of procedure of Jordanian Representatives council for 2013, and paragraph (a) of Article 95 of the Bylaws of the Jordanian Senate for 2014.

Fourth: Questioning Must be Free of Hurtful Statements: This condition was stipulated in paragraph (b) Article 134 of the rules of procedure, of the Jordanian Representatives council for 2013, and paragraph (b) Article 95 of the rules of procedure of the Jordanian Senate council for 2014. Article 126 of the rules of procedure of the Jordanian Representatives council stipulated several conditions for a parliamentary question, such as that wording: ... (c) ... must not include offensive or inappropriate language, a request for questioning must not include offensive, insulting or defaming (wording) to the minister, participating members of Council in questioning must also comply with this condition when discussing, questioning or responding to a minister ... (to) whom questioning is addressed (Sous, 2007, p. 41).

Second Section: Objective Conditions

Firstly: Questioning Must not Violate Provisions of Constitution and law: Parliament may not violate provisions of the Constitution, law or internal regulations of council, when exercising its legislative or supervisory powers. Consequently, parliamentary questioning must not contain matters contrary to the Constitution, law or internal regulations. This condition was stipulated in paragraph (b) Article 134 of the procedural rules of the Jordanian representatives council for 2013, and paragraph (b) Article 95 procedural rules of the Jordanian senate council for 2014, article 126 of rules of the procedural rules of the Jordanian Representatives council and article 90 of the procedural rules of the Jordanian senate council stipulates: not to violate provisions of constitution.

Secondly: Questioning Must be Linked to a Matter Within Jurisdiction of Government: Questioning must include questioning government or one of its members and accusing it of misconduct or violation of constitution and law provisions. Therefore, to be acceptable, questions must be linked to an issue within the jurisdiction of the government, whether that

jurisdiction is organic, temporal or spatial; the responsibility of the entire government or one of its members for a particular action is its competence (Al-Azab, 2009, p. 180).

Consequently, the government or one of its members should not be questioned for acts within the jurisdiction of the judiciary, or of the head of state (the King), which he exercises alone without government participation (Abu Tabikh, 2017).

Thirdly: Questioning Should not be Detrimental to Public Interest or Achieve the Personal Interest of Questioner: Paragraph (b) Article 134 of the procedural rules of the Jordanian representatives council for 2013, paragraph (b) Article 95 of the procedural rules of the Jordanian senate council for 2014, specify what is required in a question. Article 126 of the procedural rules of the Jordanian representatives council stipulates that, in a parliamentary question, the subject is not to be related to the representative's personal interest or an interest which is entrusted to him. Article 90 of the procedural rules of the Jordanian senate council clarify that- (c) a question must not violate provisions of the Constitution or harm the public interest, and (e) a question subject is not to be related to the representative's interest or an entrusted to him.

Having studied questioning by defining parliamentary questioning and its conditions, we proceed to study questioning procedures and their results.

Second Topic: Questioning Procedures and Its Results

The 2013 procedural rules of the Jordanian representative's council, and the 2014 procedural rules of the Jordanian senate council, set forth the procedures to be followed, to include the questioning on Council's agenda and then discuss it. After verifying the availability of formal and objective conditions that must be met, they also clarified the result to which it will be drawn, which will be clarified, through the first demand to be devoted to study questioning procedures, and the second demand to be devoted to study the result of questioning.

First Demand: Parliamentary Questioning Procedures

Parliamentary questioning goes through two phases:

Section I: Procedures Preceding the Discussion of Parliamentary Questioning: After the Council member submits the request for questioning to the Speaker of Council, fulfilling his formal and objective conditions, the Speaker should inform the Prime Minister or Minister to whom it has been sent, and should include it in the agenda to set a date for discussion.

Firstly: Inclusion of Questioning in Council's Agenda: The purpose of including questioning in a council agenda is to determine the day of its discussion, so as not to surprised a member of the executive authority who has not prepared his defence and its support, by receiving a question without being able to defend himself (Attia,1996).

The inclusion of questioning in Council's agenda is preceded by several actions, including informing the person to whom it was addressed. This procedure was stipulated in paragraph (a) of Article 134 of the procedural rules of the Jordanian representative's council for the year 2013:".... The President should inform a competent minister of questioning". Questioning should not be included in an agenda, except after hearing from an addressee of questioning. This is understood from Article 135 of the Jordanian Parliament's procedural rules of 2013, which states: (A) A Minister should answer the Speaker of Council as to questioning in writing, within a period not exceeding twenty-one days, unless the Speaker deems the situation as urgent and the Minister agrees to shorten the period. (B) If the answer requires an investigation or information that cannot be provided within the determined period, the Minister may request that the Speaker extend for a period not exceeding thirty days. The Speaker should inform the questioner and Minister accordingly.

(C) The questioning and answer shall be included in the first session allocated thereto. Questioning should also be included in that agenda, if the Minister's reply is not received within the prescribed period. Also, Article 96 of the Jordanian Senate's rules of procedure 2014 stipulated that: (A) A Minister should answer a Speaker of Council as to questioning in writing, within a period of two weeks maximum, unless the Speaker considers situation to be urgent and the Minister agrees to shorten period. (B) A Minister may request the Speaker to extend the period. The Bureau of Council may extend it to the extent deemed appropriate, and the Speaker should inform the questioner and Minister accordingly. (C) The question and answer shall be included in the first session allocated thereto. Questioning should also be included in that agenda if the Minister's reply is not received within the prescribed period.

Secondly: Determine date to Discuss Questioning: A period set by the Constitution or procedural rules of council to discuss questioning should be respected and abided by, in accordance with a deadline. However, a discussion of questioning may be postponed after taking a government's opinion on the date of debate or session. The Constitution and its amendments specified this period in Article 96 as follows: "... and should not discuss questioning before and within eight days of his submit to Minister, unless the case is urgent and the Minister agrees to shorten the determined period". The wisdom of setting a date for discussing a question is in giving the government or a member of the executive authority a chance to be able to prepare a response to questioning. In particular, this is a dangerous procedure, as it can move confidence in a minister or the government as a whole. This condition should not be exceeded unless two conditions are met: first, questioning must relate

to an urgent case that cannot be delayed; second, approval of the government, or the particular Minister to whom the questioning is submitted must agree to consider questioning expeditiously and without adhering to the time limit set out in constitution (Nassar,2003).

It is worth mentioning that in some circumstances the date of the questioning discussion may be postponed from its specific and agreed dates. The government or minister to whom questioning is addressed may have a role in postponing discussion. The questioner may also have a role in delaying this date, but in any case the Council must agree to delay.

If the government does not provide requested data by a questioning member, he or she should have the right to postpone discussion of questioning until it is prepared and submitted. The same is so in the case where it is presented to him, and he has not been able to study it before discussion. This is understood from the Article 136 text of the procedural rules of Jordanian representative's council for year 2013 and Article 97 of the procedural rules of the Jordanian Senate council 2014, in conformity with the article contained in the rules of procedure of the Representatives council mentioned above.

Section II: Discussion of Questioning Procedures: Paragraph (d) of Article 135 of the procedural rules of the Jordanian Representatives council 2013 follows procedures in discussion.

According to Mohamed (2011) the discussion procedures take place in the following order:

- A- Explain the questioning by questioner.
- B- Respondent replied (minister).
- C- Open discussion for council members.
- D-** End discussion on the subject of questioning: paragraphs (e) and (f) of Article 135 of the procedural rules of the Jordanian Representatives council 2013 show how a questioning discussion request concludes. Paragraph (e) of Article 96 of the procedural rules of Jordanian Senate council 2014 clarified how the questioning discussion request was concluded, where it stated: "If questioner declares his conviction, the president should declare the search terminated, unless one of the senators adopts the questioning subject, then discussion should continue, fate of submitted questioning to Senate was clarified in Article 98 of the procedural rules of the Jordanian Senate council, which states: "Upon completion of the discussion, the Speaker shall inform Prime Minister and the Speaker of Representatives council in writing."

The Second Demand: The Result of Parliamentary Questioning

Khatib (2017) mentioned that the result of parliamentary questioning varies depending on council. If questioning is in front of the Representatives council, the most important

consequence of questioning is the possibility of raising the political responsibility of one of the ministers or government as a whole. That relates to political violations or errors estimated by Council (Ajarma, 2010, p.140), however. If questioning is taken in front of the Senate council, the Council President should inform the Prime Minister and Speaker of the Representatives of the discussion result, in writing. The Constitution and its amendments provide for the responsibility of the government as whole, and the responsibility of ministers individually in front of the Representatives council, but not the Senate council (Alwan, 2010, p.176). Article 51 of the Constitution stipulates: "The Prime Minister and Ministers are responsible in front of the Representatives council for the common policy and each Minister is responsible in front of the Representatives council for the work of his Ministry."

However, it should be noted that Jordanian constitutional system did not require interdependence between questioning and of confidence, while successful questioning leads to confidence motion; confidence can be motioned without being questioned (Kanaan, 2012, p. 252).

However, questioning in the Senate Council should not move political responsibility of the government or a minister. The result of questioning will be limited to informing the Speaker and Prime Minister of the discussion result of questioning in writing, according to Article 98 of the procedural rules of the Jordanian Senate council for 2014. This result should not be underestimated. When the Speaker is informed of the result of parliamentary questioning, he can depend on this result and put new questioning to the government or minister, in front of the Representatives council itself. Also, reporting the results of questioning, to the Prime Minister, may prompt him to plead that the King to dismiss a minister. Presenting this result to the public will embarrass the government or minister, prompt a resignation.

Conclusion

This paper has studied the importance of Senate members' right to question government members in the Jordanian constitutional system. It shows us that parliamentary questioning is one of the most dangerous means of parliamentary control over the work of government. Senate questioning may result in a motion that directly affects the political responsibility of a government or a minister, if it is later in front of the Representatives Council. This may lead to a confidence motion as to the government as a whole or of a questioned minister, resulting in him resigning or imposing on him or his government to resign, if the result of a vote in parliament is approval by a majority of members for a confidence motion. That is despite the inability of the Senate Council, in itself, to move the issue of a minister's political responsibility. Senate questioning should not be underestimated. In the light of what has been studied the researcher cites some findings and recommendations:

Results

1. Questioning is one of the most dangerous means of parliamentary control. It involves accusing the minister or government of delinquency or violating the provisions of the law or Constitution.
2. Questioning is essentially a political accusation. It must be based on evidence, so that the minister or government can prepare answers and evidence to refute the accusation.
3. Questioning is not a personal right of a member of parliament. Any other parliamentarian may participate in it. Even if the member requesting questioning waives it, it should not be forfeited if adopted by another parliament member.
4. The result of questioning in front of the Jordanian Representatives Council may move political responsibility of a minister or government, because it is the Council to which the minister is responsible politically, because it is elected by the people.
5. The result of questioning in the Senate Council is that the Prime Minister and Speaker are informed in writing of it.
6. Questioning in the Representatives Council is based on questioning in the Senate council. The Representatives Speaker has the right to proceed with new questioning in front of the Representatives Council, if the Senate Council proved the existence of errors or deviations in government performance.

Recommendations

1. The researcher calls Jordanian legislators to reduce the period granted to the minister to answer questioning, which is for ten days. That is so whether questioning is before the Representatives or the Senate Council. The period stipulated in the procedural rules of the Representatives Council is (21) days, and two weeks in the procedural rules of the Senate Council. It is too long and exaggerated, since the preparation of answers to questioning often does not require such a period.
2. The researcher calls Jordanian legislators to stipulate certain matters expressly, in the Senate procedural rules. If Senate questioning shows errors or deviations by the government or a minister, it should be necessary to inform the Speaker of the Representatives Council with a requisite proposal for conducting further questioning, before the Representatives Council on the same subject, in preparation for moving the issue of ministerial political responsibility against the government or minister.
3. The researcher calls Jordanian legislators to stipulate expressly in Senate procedural rules that, if examination of questioning in front of the Senate shows that there are errors or deviations by a minister, the Prime Minister should be notified thereof with a proposal by the Senate Speaker to the Prime Minister, supported with a proposal by the Prime Minister to the King to dismiss the minister.



4. The researcher calls Jordanian legislators to stipulate expressly in Senate procedural rules that, if discussion before the Senate shows errors or deviations by a minister or government, that it is necessary to publish that discussion in the media, to inform the public of these errors and deviations. This would be a means of pressuring the government or minister to resign.

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