Second chapter

PRESENCE OF MINISTERS IN CONGRESS

There are four cases in which the presence of ministers in Congress occurs: when they are required by the legislative body; when they must appear periodically; when they witness the debates, and when they exercise the power to participate in them. Of these four modalities, the most widespread is the first; it is provided for in all current democratic Constitutions, with rare exceptions such as the Dominican Republic.[29] Regular attendance is mandatory in Argentina (article 101) and in Peru (article 129); in Bolivia (Article 103) it is possible to witness the debates but without taking part in them, and the most important development is recorded in cases where ministers are allowed to freely intervene in the debates. This is the case in nine Latin American countries,[30] in addition to the Philippines, Iran, and Uzbekistan, among others.

It is significant that in ten nation states it is possible for ministers to use the parliamentary rostrum. Except for Brazil and Chile, all of them also admit interpellation and, in most, censorship. Conversely, of the countries where these two forms of control are envisaged, only El Salvador, Honduras, Nicaragua, Panama, Paraguay and Uruguay do not contemplate the possibility of members of the cabinet participating spontaneously in the deliberations of Congress.

As can be seen, the number of countries that have incorporated parliamentary instruments in relations between the organs of power is increasing, with tangible results in terms of the stability and effective performance of their institutions. In the case of the intervention of the ministers in the parliamentary platform, it encourages a more intense exchange of points of view and contributes to the political centrality of the representative bodies.

[29] Argentina (article 71), Brazil (article 50), Colombia (article 208), Costa Rica (article 145), El Salvador (article 132), Ecuador (article 156), Guatemala (article 168), Honduras (article 205), Mexico (article 93), Nicaragua (article 151), Panama (article 155), Paraguay (article 193), Peru (article 129), Uruguay (article 119) and Venezuela (article 223).

[30] Argentina (articles 100 and 106), Brazil (article 50), Chile (article 37), Colombia (article 208), Costa Rica (article 145), Guatemala (article 168), Peru (article 129), Dominican Republic (article 38) and Venezuela (Article 245).

In systems that have not taken that step, cabinet members have no better platform than that offered by the media, with the inherent problems of dependence that result. Access to the media becomes one of the keys to exercising power, giving them an influence that is not offset by that which should also be assigned to congresses.

In addition, the participation of ministers in the debates offers them an opportunity for training in political controversy that would not otherwise occur. Thus, the inertia of bureaucratic behavior and the cryptic exercise of power that has been a constant in Latin American presidential systems is mitigated. At the same time, the representatives have a better chance of having information and knowing first-hand the criteria that guide political decisions in their country. This is an incipient, but promising experience for revamping presidential systems.

The intervention of ministers in debates has become generalized as a parliamentary practice in presidential systems, even without any constitutional provision. In the Mexican case, since 1934 the Regulations of Congress (articles 53 and 130) empower the secretaries to intervene in the debates when they decide; but none have made use of that attribution in the last fifty years.

Of the various political controls of parliamentary matrix, in Brazil the Constitution only contemplates the presence of ministers in congressional debates, if there is an agreement with the board of directors corresponding to each of the chambers. The applicable precept reads like this:

> Article 50.
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> ...
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> 1st. The ministers of State may appear before the Federal Senate, before the Chamber of Deputies or before any of its commissions, on their own initiative and with prior agreement with the respective board, to present a relevant matter for their ministry.

This provision appears to limit the freedom of cabinet members to attend Congress on a discretionary basis, although at least it leaves open the possibility that they occupy the rostrum when so agreed with each chamber. In practice, no restrictions are imposed for this type of intervention, and what is wanted is to regulate the turn in the use of the rostrum. It is a rule that also applies in other systems, although it is left to parliamentary regulation. Its inclusion in the Brazilian constitutional text obeys the detail with which numerous precepts of the Constitution have been drawn up.

For other systems, the Philippine Constitution provides:

> Article VI.
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> Section 22. The heads of the departments, on their own initiative, with the consent of the President or at the request of either House, in accordance with the provisions of their own regulations, may appear before the chambers and be heard in relation to the department that They lead… When the security of the State or the public interest requires it and the President of the Republic so indicates it in writing, the appearance will be held in secret session.

The precept opens the possibility that the members of the cabinet make the decision to appear before any of the chambers. The structure of the precept indicates that the participation of the ministers is informative rather than deliberative because it is not indicated that they can freely participate in the debates. However, if it were to be used that way, it would be an instrument to facilitate communication between the government and Congress. Such a provision cannot be understood restrictively, so that, even without modifications, the frequent presence of officials could not be considered an intrusion into congressional life.

The following is envisaged in Iran:

> Article 70. [Government assistance].
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> The President, vice presidents and ministers have the right to participate in the public sessions of the Assembly, individually or collectively. They can also be accompanied by their advisers. If the members of the Assembly consider it necessary, the ministers are obliged to attend. When ministers decide, their statements should be heard.

Even though the Iranian constitutional system concentrates power on religious leaders, the ministers have margins for political operation before the Assembly. Forced to attend when they are summoned, they can also take the initiative to appear before the Assembly and have the right to be heard, thereby reducing the prevailing verticality in the power structure, and facilitating debate among political agents. This is, in essence, the objective pursued by allowing, and in some cases sponsoring, the intervention of ministers in the parliamentary platform.

The Constitution of Pakistan provides: "Article 57. The Prime Minister, a Federal Ministers, a Minister of State and the Attorney General shall have the right to speak and to take part in the debates of each chamber of Parliament, or of their respective committees, but they may not vote".

As discussed in the chapter on censorship, the president appoints ministers from among the members of Parliament. In this sense, it is not surprising that they can make use of the rostrum. However, by being prevented

from voting, it is denoted that while they occupy a ministerial position, their rights as legislators are suspended. In parliamentary systems it happens the other way around, because the ministers continue to vote in their assembly.

The case of Uzbekistan is regulated as follows:

> Article 80. The President of the Republic of Uzbekistan, the Prime Minister, the members of the Cabinet of Ministers, the Presidents of the Constitutional Court, the Supreme Court and the Court of Arbitration, the Attorney General of the Republic and the President of the Central Bank, they have the right to attend the sessions of the Oliy Majlis [Parliament].

As in any presidential system, the Uzbek constitutional order provides that the President of the Republic is head of state and government (article 89), for which reason he presides over the cabinet of ministers. Despite his nature as head of state, the president is empowered to attend parliamentary sessions. Another original aspect of this rule is that the heads of the jurisdictional bodies, the prosecutor and the president of the central bank also have this right.

Although the Constitution only refers to the right of attendance, it has been understood that it is not a passive presence, as mere spectators. In fact, given the public nature of all congresses and parliaments, a rule is not required that allows officials to be part of the public that watches the debates. The right to attend, provided for in a supreme norm, implies the right to participate in the deliberations. Otherwise, officials not mentioned in article 80 of the Constitution could not even appear at parliamentary sessions, which is incompatible with any democratic constitutional system.

It is necessary to analyze this norm in the context of the Uzbek political system. The president (Islam Karimov) exercises in practice a very concentrated power, which has been perpetuated since 1990. Among his decisions was to proclaim a constitution that incorporates "all democratic requirements" in accordance with current standards. Parliament has been dominated by a hegemonic force that is not put at risk by a provision as open, in the letter, as the one mentioned. This, however, the precedent must be recorded, even if it is only formal, due to its theoretical and practical implications.

The Uzbek Constitution deviates from the principle preventing heads of state from taking part in parliamentary sessions. Due to the symbolic representation of the head of state, it is not recommended that he have a systematic presentation in the political debate, but by conferring this attribution, the Constitution emphasizes that the president is responsible for

government management. However, intervention in the rostrum of a head of state has more drawbacks than advantages. Inasmuch as in a presidential system the incumbent exercises both heads (of the state and of the government), it could be considered that his participation in the parliamentary platform obeys his function as head of the government. This would be understandable. However, national representation requires a minimum of neutrality, because a president exercises it without distinction of currents of opinion or political factions, even if they are majority.

In addition, all heads of State, both in presidential and parliamentary systems, have political responsibilities for conciliation and balance that they cannot put at risk due to a parliamentary discussion that, in general, leads to conflicting positions. Which is not a significant risk in an authoritarian structure, but it is in an open or aspiring system.

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The participation of ministers in the parliamentary rostrum tends to be easier in presidential systems. The greater or lesser use of this communication tool depends on the intentions of the government and the skills of the ministers. It is evident that frequent attendance offers the government a very propitious setting to promote its programs and explain its decisions, but it also exposes ministers to disagreements and setbacks. The most common is that the government delegates, in the parliamentarians of its party or coalition, the task of explaining the reasons for its action. Sometimes, it is the allies in congresses who show the greatest resistance to the participation of ministers in the debates, so as not to be displaced as government intermediaries before public opinion and other political forces.

In these circumstances, the constitutional provision serves as an enabling norm whose intensity of use may vary as recommended by each situation or according to the style of each government. From the point of view of classical theory, this possibility represents a more flexible and constructive way of seeing the separation of powers, since the specialization of functions does not translate into political distance.

In accordance with article 135.9 of the Colombian Constitution, which can be consulted in the fourth chapter of this work, the mere "disregard for the requirements and summons of Congress" is a cause for promoting the motion of censure. It is an extreme measure that underscores the growing importance of the presence of ministers in Congress.

Although, as is examined in the corresponding chapter, in Colombia the motion of censure has been granted an excessive extension in this matter, regarding the summons made to the ministers to appear, it is reasonable that the Congress has the means of urgency that make your means of political control effective.

In other constitutional systems, such as Paraguayan or Peruvian, there is only a sanction when the appointment issued by Congress has the specific purpose of interpellating the minister. In this way, the concurrence before a first call could give rise to a second requirement, in this case accompanied by a means of urgency.