

END OF THE MINISTER'S LEGAL STATUS IN PALESTINIAN LAW

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Abstract

The Palestinian law laid down a set of legal rules regulating the Minister's legal status and his relationship with the career status. In accordance with the Palestinian law, the Minister's legal status shall be established through several stages, procedures and decisions between the initial and another end which has the legal effect in the establishment of this legal status, as well as end of Minister's legal status shall be in the availability of one of the cases stipulated by the Palestinian law, either to be the resignation of the government as a whole or to withhold confidence, resignation or dismissal of the Minister or the vacancy of the ministerial position. In view of the fact that there are no limited cases of the end of the Minister's legal status within a single Palestinian law, the researcher, through the results and recommendations of this research, will attempt to solve this problem by analyzing and explaining some legal legislations and books. Therefore, the study will address the on Minister's legal status in the Palestinian law, considering that this matter has a legal effect on the future application.

Keywords

minister's legal status, palestinian law, parliament

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Introduction

The Palestinian Law stipulates that the Minister's legal status shall be established through several stages, procedures and decisions between the preparatory and another end which has the legal effect in the establishment of this legal status, also the end of Minister's legal status shall be subject to one of the cases stipulated by the Palestinian law, whether the resignation of the government as a whole or the withholding of confidence, resignation or dismissal of the Minister or the vacancy of ministerial position. (Abdelkarim Benkila, 2014:10).

Research about the end of Minister's legal status in the Palestinian law is through research on the legal cases stipulated by the Palestinian law and these cases are the resignation of the government as a whole and the withhold of confidence and resignation or dismissal of the Minister and the vacancy of ministerial position. (Ahmed Mohamed Hamad, 2017: 94).

It is also necessary to talk about the legal effects on each of the previous cases where the Palestinian law arranged different effects on each of the previous cases in terms of the legal effect, where the legal effect may be collective to the entire Council of Ministers or may be individual to a specific Minister. (Hamdi Qubailat, 2005: 90).

The reason for the research about this subject is the lack of a legal library for specialized research dealing with this part of the subject of this research. Therefore, the researcher will clarify each of these cases as follows:

Problem of the Study

Problem of research depends on not limiting and determining cases of the end of Minister's legal status within a specific Palestinian law, but the legislator provided for cases of the end of Minister's legal status in more than one law, which is making it difficult scientifically to researchers in the legal field. Also, failure to determine the legal effect if there is any case from cases end of the minister's legal status.

Research Method

The study is based on doctrinal approach with descriptive analysis. The data collection was through library and field researches. The library research was conducted to seek secondary data using primary, secondary, and tertiary legal resources. In this stage, several laws relating to the research problem were reviewed to determine its solution.

The Resignation of the Whole Government

The resignation of the Government as a whole means the end of Minister's legal status and members of his Government and is considered the first case of the end of Minister's legal status and the Government shall be considered resigned and reconstituted if there is one of the cases stipulated in the Palestinian Basic Law of 2003, namely. (Palestinian Basic Law of 2003. Article 83).

After the start of a new term for the Legislative Council, where the term of the Legislative Council will end when the performance of members of the new Legislative Council elected sworn in. (Palestinian Basic Law of 2003. Article 47). After a vote of withholding confidence from the Prime Minister or the Prime Minister and his government or at least one-third of the number of ministers. Any addition, change, vacancy or dismissal involving at least one-third of the members of the Council of Ministers. Death of the Prime Minister. The resignation of the Prime Minister or the resignation of at least one-third of the members of the Government. The dismissal of the Prime Minister by the President of state. (Fathi Abdel-Nabi Wahidi, 2017:520).

It is clear from the foregoing that the Government is considered resigned and reconstituted, if any of the cases stipulated in the Palestinian Basic Law of 2003 are available. Accordingly, the availability of any of the preceding cases leads to the end of the legal status of the Prime Minister and members of his Government combined.

Withhold Confidence

The mechanism of withholding confidence of the government or one of its ministers is the second case of the end of Minister's legal status and is considered as a pillar of the parliamentary and mixed system. A supervisory mechanism is utmost importance to the work of the Legislative Council where from through which it can monitor the work of the government in all areas of work to ensure that they do not deviate from the goals and policies set for them. (Youssef Safi, 2008: 115). It is also an important guarantee of public liberties within the state, where the government or the executive authority in carrying out its function may exceed the constitutional limits set for it or abuse the rights it has. Here comes the ministerial responsibility as a right which gives the parliament the right of withholding confidence from the government or one of its ministers when the conduct of the Government or the Minister is required to the responsibility. (Fathi Abdel-Nabi Al-Wahidi, 2015:113). The report of ministerial responsibility by means of a - withholding confidence motion against the government or one of its ministers takes two forms:

Corporate Responsibility

This responsibility includes all the ministers since directing solidarity responsibility by means of a withholding confidence motion for all ministers requires the resignation of the entire government, where resignation of the entire government as here long as the work that transferred the responsibility is related to the policy of the general government or attributed to the prime minister himself because he is a symbol of the government and the first responsible of the general government policy. (Palestinian Basic Law of 2003. Article 74-3).

Individual Responsibility

This responsibility is realized when the action or conduct that transferred the responsibility is attributed to a particular minister within the government and in particular the policy of his ministry, not the general policy of the Council of Ministers.

This withholds confidence in the minister alone, forcing him to submit his resignation. (Palestinian Basic Law of 2003. Article 74-4).

About the Palestinian situation, the rules of procedure of the Palestinian Legislative Council have granted the power of withholding confidence against the Government or to one of its ministers in two places.

The first: is that when discussing interrogation as a tool of parliamentary oversight, the rules of procedure of the Legislative Council stipulate that “the interrogator shall explain the subject of his interrogation for the minister and after the minister’s answer, the members of the Legislative Council may participate in the discussion. if the interrogator is not convinced with the answers of the Minister and he shall indicate the reasons for the non-conviction and the interrogator, or a member of the Legislative Council may withhold confidence in the questioning minister” (Rules of Procedure of the Palestinian Legislative Council. Article 80-4).

Second: when discussing the subjects that the Legislative Council may be urgent to consider in accordance with exceptional procedures stipulated by the Legislative Council where the rules of procedure of the Legislative Council provide that “Council may decide to expedite the consideration of any subject matter including the decision to grant confidence or to withhold confidence to censure or criticize the executive authority or a minister and to issue its decision without discussion in the following cases at the request of acausal letter submitted by at least five members of the Legislative Council. Under the request of the Council of Ministers at the request to the competent Preparatory Committee.” (Rules of Procedure of the Palestinian Legislative Council. Article 81).

In the same context the Palestinian Basic Law of dealt with the issue of withholding confidence of the government or one of its ministers by the Legislative Council it pointed out that “Ten members of the Legislative Council may apply to the President of the Council to hold a special session to withhold confidence in the government or one of the ministers after being questioned.” (Palestinian Basic Law of 2003. Article 77-1).

After the submission of this request, the first meeting shall be scheduled three days after the submission of the application and may not exceed two weeks from that date. (Palestinian Basic Law of 2003. Article 74-2). If this meeting is scheduled, a withholding confidence motion shall be voted on by the government or by one of its ministers by an absolute majority of the members of the Legislative Council. (Palestinian Basic Law of 2003. Article 78-1).

Withhold of confidence in the Government or one of its ministers will result in the termination of its mandate or his mandate, and then they shall temporarily exercise their functions as a business government. They shall not take decisions except as necessary for the conduct of executive work until the formation of the new government. then the President of the Palestinian National Authority to provide an

alternative within a maximum of two weeks starting from the date of withhold confidence and subject to the new Prime Minister to the provisions of the basic law of 2003, but in case of withholding confidence of one or more members of the Government, the Prime Minister offers an alternative at the next meeting not to exceed two weeks from the date withhold confidence. (Palestinian Basic Law of 2003. Article 78).

The bottom line is that a vote of withholding confidence in the government or one of its ministers will result at the end of his mandate and end of Minister's legal status

Resignation or Dismissal of the Minister

submit the resignation of the Minister to the Prime Minister or do the latter with his dismissal, in both cases the vacancy of the post of Minister and thus the end of Minister's legal status, where the resignation or dismissal of the Minister is the third case from cases end of Minister's legal status, and it is necessary to talk about the resignation or dismissal of the Minister, clarify the meaning of the resignation of the Minister and then a statement of meaning to dismiss the Minister and thus make the difference between them as follows:

Minister's Resignation

In order to determine the meaning of the minister's resignation, the researcher points to the scarcity of jurisprudential definitions, and emphasizing the absence of a legislative definition, In order to determine the meaning of the resignation of the minister, the jurist Munira Balourghi defines the resignation as the right of the Minister to leave the service within the ministry-affiliated to him in a final manner in accordance with the procedures provided by law. (Palestinian Basic Law of 2003. Article 79-1).

It should be noted here that with reference to the Palestinian Basic Law of 2003, the researcher finds that the request for resignation is submitted by the Minister to the Prime Minister according to the terms of powers and tasks entrusted to him. This is considered an application of the hierarchy of administrative hierarchy and administrative subordination which requires that the request for resignation from the Minister be submitted to the Prime Minister. (Palestinian Basic Law of 2003. Article: 68). As for the request for resignation by the Prime Minister, the researcher finds that the request is submitted to the President of State in the application of the same principle that requires submits the request to resign from the Prime Minister to the President of the State. (Hanin Emad Al-Faris, 2016: 45).

Regarding the minister's resignation, the researcher finds two types: (See the website of the Star Times forums, legal affairs, the date of visit 28/4/2017, www.startimes.com)

Voluntary resignation: according to which any minister within the Council of Ministers may submit his resignation to the Prime Minister definitively and in accordance with his free will free of defects, and in accordance with the law.

Judicial resignation: according to which the minister does not resign definitively in accordance with his free will free of defects, but as a result of the resignation of the Prime Minister, in the sense that the request the resign that his submitted the Prime Minister requires the resignation of all members of the Council of Ministers. (Palestinian Basic Law of 2003. Article 83).

One of the applications of the resignation of the minister in the Palestinian reality; the resignation of former Minister of Economy Bassem Khoury from the government of Dr Salam Fayyad. (See the website of Ma'an News Agency, on the subject of the resignation of Minister, the date of visit 24/4/2017, [www. maannews.net](http://www.maannews.net)). The resignation of the former Minister of Social Affairs Shawki al-Aisa from the government of Dr Rami Hamdallah. (See the news website, about the subject of the dismissal of a Palestinian minister, the date of visit 28/4/2017, www.news.com).

Minister's Dismiss

In order to determine the meaning of dismissing the minister, the researcher points to the scarcity of jurisprudential definitions, while also emphasizing the absence of a legislative definition. In order to determine the meaning of dismissing the minister, the researcher defines dismissal as: A proposal submitted by the Prime Minister to the President of State requesting the dismissal of a particular Minister within his Government as a result of exceeding the powers specified by law and the decision shall be issued by the Prime Minister in cooperation with the President of state.

It is clear from the above definition that the dismissal of a particular minister within the Government is in cooperation between the Prime Minister and the President of state. Although the decision to dismiss is issued by the Prime Minister in his capacity as Chief Administrative Officer within the Council of Ministers.

Researcher finds this cooperation by reference to the introduction to the Palestinian Basic Law of 2003, which stated that the Legislative Council had considered during the discussion of the last law that it was not necessary to add some statements concerning the presentation of all matters relating to the Government from the formation, dismissal and resignation of the Prime Minister to the President of state, considering that this matter became a political custom unanimously adopted by the Council during its discussions without the need to add a clause in the body of the law.(Palestinian Basic Law of 2003. See Introduction).

Regarding the minister's dismissal, the researcher finds two types:

Real dismissal: It is realized when the prime minister cooperates with the President of state to dismiss any minister within the government as long as he has exceeded the limits of his powers specified by law. (Palestinian Basic Law of 2003. Article 68).

Judicial dismissal: It is achieved when the President of the state dismisses the Prime Minister, as a result of exceeding the limits of his powers determined by law Where the

dismissal of the prime minister by the President of state requires dismissal of the government as a whole. (Palestinian Basic Law of 2003. Article 83).

Application to dismiss of the minister in the Palestinian reality, the dismissal of Prime Minister Rami al-Hamdallah to the former Palestinian justice minister Salim al-Sakka from office as a result of the latter exceeding the limits of his powers and powers specified by law. (see the news website, on the subject of the dismissal of a Palestinian minister, the date of visit 28/4/2017, www.elnnews.com).

Vacancy of the Ministerial Position

Vacancy of ministerial position considered the fourth case of end of the Minister's legal status, since the researcher has talked about the withholding of confidence and resignation and dismissal as cases leading to the vacancy of the ministerial position and thus to the end of the Minister's legal status, the researcher will address in this chapter the other reasons that lead to the vacancy of the ministerial position, as follows:

Minister's Death

The Minister's death is a natural occurrence which leading to the vacancy of the ministerial position, and thus to the end of the Minister's legal status. (Abdel Nasser Abdulla Abu Samhadana, 2009: 373). Upon the death of the Minister, his heirs shall be entitled to an amount equal to 20% of the monthly salary for each year spent in the Government up to a maximum of 80% of the total amount specified for the monthly salary, This amount shall be disbursed immediately upon the vacancy of his or her position and for this reason, the fractions of the year shall be calculated for a full year. (Law of Remuneration and salary of Members of the Legislative Council and Members of the Government and Governors No. (11) of 2004. Article 7).

The death of the Minister shall result in the Prime Minister selecting another new Minister to fill the vacancy in the number of Ministers as a result, and here, the prime minister must submit the new minister within a maximum of two weeks from the date of vacancy to the Legislative Council in the first session to vote to give confidence to the new minister. (Palestinian Basic Law of 2003. Article 79-3). where no minister may exercise his functions unless he is trusted by the Legislative Council. (Palestinian Basic Law of 2003. Article 79-4). And to take the oath before the President of state. (Palestinian Basic Law of 2003. Article 68).

Health Disability for the Minister

The appointment to the general functions is required to prove fitness, and this requirement is not only for the beginning of recruitment in public office but is a condition for the continuation of job. (Civil Service Law No. 4 for the year 2005. Article 98). Since the Minister holds a public office, although not a public employee, he is required to satisfy the requirement of fitness during the tenure of the ministry. Accordingly, if the Minister loses this condition, the vacancy of the ministerial position

will result in the end of the Minister's legal status and prove the Minister's lack of fitness by a decision of the Higher Medical Committee. (Adnan Amr, 2010: 284). The reason behind this is that public service requires the physical capacity of those who occupy it to be able to carry out their duties. This is to achieve the public interest and for interest the minister himself, and to prevent his health from deteriorating further due to his continued work and his lack of rest. (Mohammed Sulaiman Nayef Shabir, 2015: 464).

Lack of fitness for the minister shall result in the Prime Minister selecting another new Minister to fill the vacancy in the number of Ministers as a result, and here, the prime minister must submit the new minister within a maximum of two weeks from the date of vacancy to the Legislative Council in the first session to vote to give confidence to the new minister. (Palestinian Basic Law of 2003. Article 79-3). Since no minister may exercise his functions unless he is trusted by the Legislative Council. (Palestinian Basic Law of 2003. Article 79-4). And to take the oath before the President of state. (Palestinian Basic Law of 2003. Article 67).

Conclusion

The legal effect of the availability of this cases is the end of the Minister's legal status, with some crucial points. First, The Government or the Council of Ministers or the minister shall be considered resigned and reconstituted after the commencement of a new term for the Legislative Council. Second, The Council of Ministers shall be reconstituted after a vote of withholding confidence from the Legislative Council on the Prime Minister or withholding confidence from the Prime Minister and his Council or at least one-third of the number of Ministers. Third, The Government shall terminate the resignation of the Prime Minister or the resignation of at least one-third of the members of the Government. At last, The dismissal of the Prime Minister by the President entails the dismissal of the Council of Ministers and reconstituted.

Recommendation

The researcher proposes that there be a special law that combines all the legal rules governing the legal status of the Minister in general, which is of utmost importance in determining the powers of the minister. The researcher recommends that the Palestinian legislator issue a special law that combines cases of ending the legal status of the Prime Minister and the Minister because of the importance of research in this the legal field. The researcher recommends determining the parliamentary monitoring tools that the Palestinian Legislative Council has in confronting the Council of Ministers or the Prime Minister or a specific Minister such as the question, interrogation and the withholding of confidence.

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