

# THE PRESIDENTIAL POWERS OF THE PALESTINIAN MINISTER WITHIN HIS MINISTRY

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## Abstract

The Palestinian Basic Law of 2003 affirmed in Article (71) of it about the Presidential Powers of the Palestinian Minister. The Palestinian Minister has the presidential powers that enable him to control the persons and works of his ministry's employees because minister is considered the supreme administrative chief within the ministry, and all employees within it follow him. In addition, in many of its rulings, the High Court of Justice in Palestine confirmed the presidential powers of the minister within his ministry. An example of this is the appointment, removal, promotion, transfer, secondment powers. The objective of this paper is, therefore, to examine the Presidential Powers of the Palestinian Minister within his ministry and distinguish it from administrative guardianship of minister. Moreover, this article has explained the ministerial authorization of the minister. In order to achieve the objective of this paper, the socio-legal research using the qualitative approach was engaged. This study found that the Presidential Powers of the Palestinian Minister exercised according the principle of the rule of law. This issue has been affirmed through numerous judicial rulings issued by the High Court of Justice in Palestine.

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## 1. Introduction

The minister exercises all the powers that derive from his capacity and position as an administrative chief with presidential power within his ministry, in accordance with the Palestinian Basic Law of 2003, principles and provisions established by administrative law and the jurisprudence of the Palestinian administrative judiciary, (Ahmad Muhammad Hamad, 2017). In addition, this power which is one of the pillars of the administrative centralization system, or what is known as government centralization or ministerial centralization as it is called administrative jurisprudence, and some Ministers have administrative control over localities (municipalities) and some institutions, (Nabila Abdel Halim Kamel, 2009).

Moreover, the Palestinian Minister has the right to appoint, transfer, promote, discipline and dismiss employees within his ministry within the limits stipulated by the

administrative laws. The minister also has the right to distribute employees within his ministry to the departments affiliated to the ministry and to assign the powers of each of them, (The Palestinian basic law of 2003. Article 71\1). Likewise, the minister may direct his subordinates by issuing the publications, periodicals, and instructions that are attached to his ministry, and it goes without saying that the minister has the powers to comment on all the actions and decisions issued by his subordinates and replace them if necessary, (Maher Jabr Nadhar, 2002).

To clarify this topic, the author will explain the concept of presidential power of the minister and distinguish it from administrative guardianship of minister, and then will illuminate the manifestations of the presidential powers of the minister.

## **II. Research Method**

This article is based on secondary data research i.e. data consisting of legal texts, literature, and pre-existing research documents (Soekanto & Mamudji, 2003:13-14). Besides, this article uses a legal approach in which legislation or regulations are interpreted under the context of purpose and legal norms (Barak, 2005; Ibrahim, 2005:61). Therefore, this approach suggests a conceptual investigation of the legislation from which the objective element (procedures) and subjective (legal intent) can be identified (Barak, 2005:88).

## **III. Research Result and Discussion**

### **The Concept of the Ministerial Presidential Powers and its Distinction from Administrative Guardianship of the Minister.**

To talk about the concept of the Minister's presidential powers and its distinction from administrative guardianship of the Minister, needs to make the following clear.

#### **1. The Concept of the Ministerial Presidential Powers:**

The presidential power for the administrative chief is an extremely important issue, namely that the administrative subordinates are responsible for their actions before the administrative chief, (Muhammad Suleiman Nayef Shbair, 2016). This was clearly confirmed by the Palestinian Basic Law in the relations of the President of the Palestinian State with the prime minister at the level of managing government facilities, the relations of the council of ministers with the ministers in, and the relationship of the ministers with their employees, (The Palestinian basic law of 2003. Article 74).

The presidential powers are that the minister has control over the persons and works of his ministry's employees because the minister is the highest administrative chief within the ministry, and all employees within it follow him, as such the minister possesses the presidential powers in facing all who are within the ministry affiliated to him. The

minister inside and within his ministry constitutes a presidential authority for the undersecretary of the ministry, or what is known as the secretary-general in some countries, (Hamdi Al-Qabilat, 2005). Likewise, the undersecretary of the ministry forms a presidential power for the general managers of the Ministry, and these constitute a presidential power for the directors, who constitute a presidential power for the chiefs of departments, who chief the division heads, and who are considered chiefs of employees within the division. If it turns the pyramid, then each of them follows an administrator up, so the employee belongs to the chief of the division, who belongs to the chief of the department, who is affiliated with the director, and the latter is linked to the general manager, who is affiliated with the undersecretary, and who reports directly to the minister, (The Palestinian basic law of 2003. Article 71).

In this direction, the High Court of Justice in Palestine ruled, confirming in its ruling the presidential authorities of the minister within his ministry, as it ruled that, "This court, after scrutiny, concluded the following: 1- That the minister is the high of the administrative pyramid in his ministry, and in this capacity has the powers to supervise his ministries, work in them, and issue the necessary instructions and decisions. In support of the text of Article (71) of the Palestinian Basic Law for the year 2003, and in this capacity, the minister may form committees to investigate and issue penalties in the light of the provisions of the law. 2- Believing the foregoing, Article (18) of the Palestinian Civil Service Law for the year 2005, stipulates that the minister has the jurisdiction to issue appointment decisions for the employees of his ministry without the higher category, according to the text of Article (17/2). Also, Article (114/1) of the Palestinian Civil Service Law stipulates that the employee may file a complaint with the chief of the government department with any administrative decision within twenty days from the date of his knowledge of it. Without responding in writing to the grievance, his grievance is considered rejected, and the employee has the right to resort to the court to rule on the request within sixty days from the date of his notification. 4- And since it is among the principles that the person who owns the appointment owns the dismissal and necessarily owns something less than that. 5- Since it is stable with the judiciary and local, regional and international jurisprudence, the minister has the powers of direction and oversight, and for this he has positive and negative incentives for subordinates in his ministry and has reward and punishment, and the matter will not be corrected otherwise and because the people of Mecca know their peoples ..... etc.", (Ashraf Nasrallah and Nidal Jamal Jaradah, 2016).

Also, what has stated in the Supreme Court of Justice's judiciary is that "..., and Article (71) of the amended Palestinian Basic Law, it made for every minister within the framework of his ministry to propose a general policy for his ministry and supervise its implementation after its approval, overseeing the progress of work in the ministry and

issuing the necessary instructions for that, and the implementation of the general budget within the allocations approved for his ministries. It is clear here that the Palestinian Basic Law has made each minister within the framework of his ministry the powers granted to him by the Palestinian Basic Law of 2003, which he exercises to achieve the public interest and the maintenance of order and internal security, in order to achieve the policies and plans that lead to the desired goals of those policies practiced by each of the ministries.”, (Judgment of the Supreme Court of Justice, 2010).

The bottom line is that one of the advantages of the minister’s presidential power is that it is of an administrative and functional nature, so that each minister is an administrative chief within his ministry, but not every administrative chief is a minister. The undersecretary within the ministry, the assistant undersecretary, and the general manager are thus considered to be administrative chiefs operating under the direction and supervision of the minister, the chief administrative officer.

In addition, the delegation generally means that a person with inherent jurisdiction relinquishes a portion of his powers to an administrative authority inferior to him, and the first is called delegate and the second is delegated to him, (Khaled Samara Al-Zoghbi, 2009).

The delegation comes in contrast to the principle of the administrative centralization system is based, whereby employees or representatives of the central authority, including the minister, are allowed to grant some of his powers to his collaborators and to the senior officials in his ministry, in order to reduce the workload and to ensure the continuity of public facilities within the state without disruption, so the minister according to the Palestinian legislator has the mandate, but with specific conditions, (Zaki Muhammad al-Najjar, 2010).

As for the ministerial delegation of the minister, the author defines it in accordance with the Palestinian Basic Law as the minister delegates some of his powers and competences to the undersecretary or to other senior management officials in his ministry within the limits of the law, (The Palestinian basic law of 2003. Article 71\5).

It is noted from the previous definition that the Palestinian Basic Law made the authorization of the Minister partial and restricted it to the employees who are entitled to authorize them with the ministry's undersecretary or senior management employees in his ministry only, and he is not allowed to delegate to others.

The Supreme Court of Justice affirmed that “..., the ministerial mandate comes to avoid the administration’s deficit and to carry out administrative work, and to enable the minister to carry out his duties that are impossible for him to carry out alone, and the court considered that the delegation is a source of jurisdiction for the delegate, and thus

concluded that the authorization decision is binding on the delegate, who must respect and accept what it says, otherwise, the minister will be subject to a disciplinary issue, (Judgment of the High Court of Justice, 2009). It also ruled that "... that the issue of jurisdiction is from the public order and it is not permissible to violate it or agree to violate it, as the court decides on its own initiative in support of Article (92) of the Civil and Commercial Procedures Law, (The Commercial Civil Procedure Law of 2001. Article 92). and for this reason the Palestinian Basic Law of 2003 specified the delegation of jurisdiction from the minister to the undersecretary or to the senior officials in his ministry as stated in the text of Article (71/5) ... etc.", (Ashraf Nasrallah, and Nidal Jamal Jaradah, *ibid*).

Here the author finds that each minister has the authority to exercise his powers to delegate the conditions defined by law, if necessity and the public interest so require, and in the interest of the integrity of administrative work within the ministries, (Adnan Amr, 2010).

In the implementation of this, it find that some of the regulations that talk about ministerial delegation explicitly state that the authorization is from the minister to the employees of the first category in ministries, for example, what was mentioned in the financial system regulations for ministries and public institutions, (the Civil Service Law of 2005. Article 3. It ruled that "The minister and the concerned minister may delegate any of their powers stipulated in this system in writing to employees of the first category in their departments", (The cabinet resolution No. 43 of the year 2005. Article 131).

In addition, the minister is not the only person who has the power to delegate, where any administrative chief or higher administrative authority can delegate a portion of its powers entrusted to it, provided that there is a text in the laws or regulations authorizing this, especially since the Palestinian Basic Law of 2003 did not prevent this, (The resolution No. 15 of 2009. Article 18). Accordingly, that the Telecommunications Regulatory Authority Act gives the executive director of the authority to delegate any of his powers to a deputy or one of the higher-class employees in the authority with his commitment to announce the chairman of the board of directors, (Abdel-Azim Abdel-Salam, 2006).

## **2. Distinguishing between the Presidential Powers of the Minister and his Administrative Guardianship.**

It must be clarified first to distinguish the presidential power from the guardianship power in general, then to distinguish the presidential power for the minister from his administrative guardianship, as follows:

### **2.2.1 Distinguishing the Presidential Power from the Guardianship Power in General:**

Initially, the presidential power is one of the pillars of the administrative centralization and aims to enable the administrative chief or higher administrative bodies to use its powers to direct and control the activity of subordinate employees or lower administrative bodies, while the guardianship authority reflects one of the pillars of administrative decentralization, and aims to establish central control by the central administration or government on the activity of local institutions and bodies. Therefore, it finds that both systems come close to each other based on the supervisory nature found in each of them, but this does not prevent discrimination between them, according to the following:

1. The guardianship authority is considered an exception to the general principle of the independence of local and other bodies from the central authority, and this means that it is not imposed and cannot be exercised except on the basis of a legal text expressly decided and within the limits of this text, and all of this is according to the administrative judiciary, (That there is no guardianship without text and no guardianship more than the text). As for the presidential power, it is a component of the central administrative organization, and it is considered one of the pillars of this system. Therefore, the presidential administrative oversight power is an assumed authority by the rule of law, and it does not need a text to be decided, it is established according to principles public even if it is not stipulated here explicitly in the law, (Mustafa Abu Zaid Fahmy, 1968).
2. One of the characteristics of the presidential power is that the administrative chief has broad, real and effective powers in facing his subordinates, as he has directing, monitoring, modifying, cancelling, and replacing their actions in their performance, while it does not find such manifestations in the guardianship authority system. For this, the presidential power is broader than the guardianship authority, (Omar Muhammad Murshid Al-Shobaki, 1981).
3. The presidential power is distinguished as internal control, while the guardianship authority is characterized as external control, given the independence of decentralized public facilities that are covered by guardianship from the central administration, (Eid Masoud Al-Juhani, 2015).
4. The presidential authority is characterized by inclusiveness and continuity, while the guardianship authority is characterized by receding and partiality, (Muhammad Suleiman Shbair, *ibid*).

### **2.2.2 Distinguishing the Ministerial Presidential Power from his Guardianship Power**

The minister is considered the supreme administrative chief within his ministry, and as such the minister has presidential powers in facing all who are inside it, and these powers authorize him to direct, guide and control the persons and work of his subordinates in their careers, not in their personal lives, (Ahmed M A Hamad; Haslinda binti Mohd. Anuar; Rohizan binti. Halim, 2020). Accordingly, it finds that all ministers have presidential powers within their ministries, but not all ministers have local guardianship authority, where it finds that the authority is the Minister of Local Government, who owns that, (Muhammad Suleiman Nayef Shbair, *ibid*). Also, there are some ministers who have the powers of the guardianship within the framework of what is known as the administrative decentralization, (Ahmad Mohammed Hamad, 2019). For example, the guardianship of the Minister of Higher Education over the Palestinian public universities such as Al-Azhar University, the Islamic University, and the National Success and Birzeit, which are non-governmental universities and are independent of the Ministry of education but the Minister has an administrative guardianship over these public utilities, (The Higher Education Law of 1998. Article 3).

### **3. Aspects of the Minister's Presidential Power**

The presidential power of the minister is distinguished by its generality and diversity, as it includes several aspects or powers exercised by the minister, (Abdel-Ghani Basiouni Abdullah, 1986). The following the author clarify these aspects or powers, as follows:

#### **3.1 The Presidential Powers of the Minister in Oversight over Subordinate Persons**

Ministerial oversight over subordinate persons is as follow:

##### **3.1.1 The Internal Organization Authority of his Ministry**

The minister, in his capacity as the supreme administrative president within his ministry, and under his power to control the persons of his subordinates, has the internal organization of his ministry, by taking all instructions and decisions related to the distribution of jobs, powers, and functional administrative powers between subordinates, and supervise the progress of work within his ministry. It should be taken into account that the distribution of jobs, competencies and functional administrative powers between subordinates be distributed in a fair manner that allows the functional administrative work to proceed in an effective way, and implement work methods that save time, effort and expenses, and set administrative and practical arrangements that ensure the provision of services to the public at the highest level and as quickly as possible maybe, (Bakr al-Qabbani, 2010).

In addition, the Palestinian Basic Law of 2003 affirmed the minister's power in the internal organization of his ministry, stipulating that each minister is competent within the framework of his ministry, to supervise the progress of work in it and to issue the necessary instructions for that, (The Palestinian Basic Law of 2003. Article 71/2).

### **3.1.2 The Appointment, Dismissal, Promotion, Transfer, Delegation and Secondment power**

The minister, in his capacity as the supreme administrative chief within his ministry, and under his power to control the persons of his subordinates, has the power to appoint, dismiss, promote, transfer, delegate, discipline, etc. It should be noted here that this power is not a privilege of the minister, but rather a type of jurisdiction exercised within the limits of the law, (Muhammad Suleiman Nayef Shbair, *ibid*). In turn, the High Court of Justice in Palestine affirmed this power in many of its rulings, (Judgment of the Supreme Court of Justice, 2012). In this regard, the Supreme Court of Justice ruled: "... , by scrutinizing and deliberating, and after reviewing the lawsuit, the answer list, the data presented in this case, and hearing the pleadings of the two parties, the court finds that by referring to Cabinet Resolution No. (211) for the year 1997, regarding the local authorities stating that the minister may appoint or add no more than two members to the total number of members of the council, due to considerations specific to the local authority according to his estimates, and this means that the legislator limits the powers of the minister of local government, who is entitled to appoint or add only two. Consequently, the decision of the contested local government minister to add new members to the Hebron municipality violates the powers and in it exceeds the obligation given to him under the above-mentioned cabinet decision. The minister has exceeded his competence, which requires that the contested decision is considered null and void.", (Judgment of the Supreme Court of Justice, 1999). In addition, the Supreme Court of Justice ruled in particular that: "... , in the decision issued by the office for the interpretation of laws ... that the reference for issuing a dismissal decision for employees of the higher category is the council of ministers, and for employees of the first category, it is the competent minister as the enforcer of the dismissal decision pursuant to Article "125" of the Civil Service System No. (23) for the year 1966, and it is still valid as long as it does not conflict with the Civil Service Law of 1998 ... etc.", (Judgment of the Supreme Court of Justice, 2010). Moreover, the Supreme Court of Justice ruled in particular that: "... , as for the Minister of Finance's decision not to implement the upgrade, it is not considered a withdrawal of the summons's promotion decision, but rather the failure to implement the financial part resulting from the promotion, and this is clear from the formula in which it was mentioned. The decision, which is "not implemented", and from the internal memo filed to the Minister of Finance from the Director-General of Payroll, which it says, "According to your instructions, the



implementation of these promotions in salaries has been cancelled" ...", ( Judgment of the Supreme Court of Justice, 2010). What is stated in the Supreme Court of Justice's judiciary in this regard also is that: "... in the light of the evidence presented in the lawsuit, it finds that the summoner is a first-class employee, and therefore the minister is the one who has the authority to issue the transfer decision, and here we find that the minister is the person who issued the decision to transfer the summoner from the position of Deputy Director of Education in Salfit to the position of principal of a secondary school within his powers and competencies stipulated in Article 66 of Civil Service Regulation No. 23 of 1966, It is still valid as long as it does not conflict with the Civil Service Law of 1998. It entrusted the minister with the authority to transfer employees of the first category when the transfer takes place from one job to another equal to it in the degree within the same unit within the ministry, and in light of the evidence presented in the lawsuit, the author finds that the summoner is from the employees of the first category, and accordingly, the minister is the competent power to issue the transfer decision, on the basis that the minister is the highest presidential power in his ministry ... etc.", (Judgment of the Supreme Court of Justice, 2003).

### **3.2 The Presidential Powers of the Minister to Oversight the Actions of Subordinates:**

The presidential powers of the Minister in oversight over the actions of subordinates are the prominent manifestation of the presidential powers, as these powers are to direct and guide in what is known as previous oversight and in overseeing the action and performance of subordinates in what is known as subsequent oversight, the following are addressed to these powers:

#### **3.2.1 The Minister's Powers in Guidance (Previous Oversight):**

The minister shall take all necessary measures to direct and guide the behaviour of a staff member who follows him, as this power relates to the action of these employees and is based on the two elements of direct and guidance before doing the action, with a view to doing it properly and in accordance with the law and in the pursuit of the public good, (Abdel-Ghani Basyouni Abdullah, *ibid*). The presidential power in directing and guidance appears in practice in the instructions, orders, and publications that the minister issues from time to time, which are distributed to employees in order to perform their work under them. Often, these instructions, orders, and publications include duties for employees to do and to interpret what is stated in the laws and functional regulations regarding their legal positions and their assigned duties, (Muhammad Suleiman Nayef Shbair, *ibid*).

In addition, instructions, orders, and publications prevail over the organizational or coordinating nature so that the aim of them is to organize the work within the ministries and not necessarily carry a legal effect. Therefore, it is considered as material

decisions or actions more than legal, and its scope does not extend outside these ministries, and that the most important consequence of that is because it is not permissible for the employee addressed to it to appeal against it before the judiciary because it does not rise to the level of administrative decisions or actions that may be challenged by nullity. Decisions or material actions are not subject to appeal because they do not legally affect the legal status of the addressee but rather means declaring face view of presidential power to the minister in the form of opinions, intentions, purposes, desires, or directives, (Tawfiq Shehata, 2010).

In turn, the Palestinian Basic Law of 2003 affirmed that "every minister within the framework of his ministry is competent to supervise the progress of work within it and to issue the necessary instructions for that.", (The Palestinian Basic Law of 2003. Article 71/2).

### **3.2.2 The Minister's authority in Oversight (Subsequent Oversight)**

The minister exercises oversight authority over the action of subordinate employees after carrying out the work. The oversight authority of the minister over the actions of subordinate employees takes more than one case. which is the power of approval, the power of comment, and the power of replace, (Abdel-Ghani Basyouni Abdullah, *ibid*). And the following is clear:

#### **A. The Authority of Approval**

This Authority is represented in the fact that the issuance of administrative work by subordinates does not imply its validity to enforce and execute directly, but rather needs to be approved by the minister who is the highest administrative chief within his ministry. Here, the minister may approve or authorize work explicitly and directly, and this may benefit implicitly through the minister's behaviour, as if the minister was aware of the behaviour issued by the subordinates and was silent about it or through the passage of a certain period determined by law without the minister's objection, provided that the approval or implicit leave is valid in relation to work in which the law does not require explicit approval, (Ali Khattar Shatnawi, 2002).

#### **B. The Authority of Commenting**

As the minister's oversight authority are not limited to his approval of the work or decision that subordinates perform, but extends to the commenting authority, which is based on checking work and providing the necessary procedures in relation to it. the minister may consider that the decision issued by subordinates must be

withdrawn or cancelling it or staying on it, but with amending it, and all of that comes in accordance with the provisions of the law and the public interest, (Judgment of the Supreme Court of Justice, 2005). On this basis, the commenting authority gives the minister the right to directly interfere in the work carried out by subordinates and then has the right to terminate it or remain it while amending it, (Maher Jabr Nadhar, 2002).

As for the previous comment method that the minister has it, it consists of withdrawing, cancelling, or amending his subordinates' decisions whenever they are defective, illegal, or inconsistent with reality, (Adnan Amr, part one, *ibid*).

The Supreme Court of Justice has affirmed the minister's right to exercise the powers of withdrawing the administrative decision and cancelling it to correct situations contrary to law or not appropriate to reality, and that this stems from his legal validity as a higher administrative chief within his ministry and that he has the right to monitor the actions and actions of his subordinates to confirm their legitimacy, legality, or relevance to reality, (Adnan Amr, part two, *ibid*).

The bottom line of the matter here is that the author has found the comment authority that the minister has in its three aspects. Withdrawal, cancellation, and amendment are considered original and assumed authority that the minister always possesses and without the need for the stipulation because the minister is the supreme administrative chief within his ministry, (Judgment of the Supreme Court of Justice, 2005).

### **C. The Authority of Replacement**

The authority of approval or authorization comes, as well as the authority to comment in the event that the subordinate employees do the work actually assigned to them, but in other cases, the opposite occurs, as it find that the minister may replace his subordinates if they neglect or fail to do what is required of them from work, (Judgment of the High Court of Justice, 1999). Whenever such failure or negligence occurs, the minister replaces the subordinate employees and does the work that was supposed to be done by the subordinates, and if there is not an explicit text that gives the minister the authority to do so, the general principles and public interest impose on him to move and do so in order not to the interests of the public are suspended and consequently, the operation of public facilities is done regularly, at which time the work is considered to be issued by the subordinates assigned to it in terms of origin, (Maher Jabr Nadhar, *ibid*).

The Supreme Court of Justice indicated that the replacement is vertical, and subordinates may not replace their chief executive and take decisions within the latter's jurisdiction, (Judgment of the High Court of Justice, 1999).

Finally, it should be noted here that the minister's control over the work of subordinates may come automatically from him or based on a grievance submitted to him by the subordinates or individuals affected by these actions, (Ahmad Muhammad Hamad, 2017).

#### **IV. Conclusion**

In the light of the preceding discussions, it is found that the Palestinian Minister has the presidential powers that enable him to control the persons and works of his ministry's employees because the minister is considered the supreme administrative chief within the ministry. And all employees within ministry follow him. In addition, the Palestinian Basic Law of 2003 and the High Court of Justice in Palestine were confirmed about the presidential powers of the minister within his ministry. An example of this is the appointment, removal, promotion, transfer, secondment, and discipline powers. This article has examined the presidential powers of the Palestinian Minister within his ministry and distinguish it from administrative guardianship of minister. Moreover, this article has explained the ministerial authorization of the minister.

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