

## The Legal Nature of the Criminal Responsibility of Ministers in Palestinian Legislation and Islamic Jurisprudence

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### Abstract:

This study dealt with the legal nature of the criminal responsibility of ministers in Palestinian law and Islamic jurisprudence, aimed at identifying the reality of responsibility and its multiple forms such as criminal, civil and political in legislation and jurisprudence, as well as the nature of the legal basis of the criminal responsibility of ministers and how The study dealt with the importance of knowing the criminal as well as political and civil responsibility according to the relevant texts and legislation. The study then dealt with the relationship of political responsibility to the criminal responsibility of ministers, as well as the legal and juridical basis for the criminal responsibility of ministers and then showed the extent The compatibility of the two legislations regarding this according to the manifestations and details contained in this study.

**key words:** Criminal Liability, Ministers, Political, Islamic Jurisprudence, Civil Liability, Palestinian Law

### introduction:

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The legal and jurisprudential legislation has made responsibility and the observance of its rules and forms one of the basic issues in considering the actions and behaviours of a person who must bear the results of the forbidden actions that he commits voluntarily while he is aware of their meanings and consequences.

we are responsible for those who serve in lower degrees of us , and responsibility requires a commitment to know the consequences in order to fix the defect and correct the mistake. The criminal responsibility of the ministers revolves around its relevance to crimes committed by while carrying out their duties, and it is the bond that arises between the state and the individual who proves through judicial procedures the validity of attribution of the act constituting the crime to him if it includes all the legal elements required by the legislator to describe the act as a crime, With the cases of exemption from responsibility lagging behind, and the criminal responsibility of the minister is to prosecute him while assuming his ministerial position and performing his job duties, and ministers may be asked to compensate the damages that may be caused to the state as a result of their own mistakes in accordance with the provisions of the civil law, and the importance of reforming the perpetrator and discouraging other people and deterring them, whether they are public or ministers, the Islamic legislation considers this issue as one of the purposes that are intended to be achieved from the application of penalties, because the limits of Islamic legislation are obstacles before occurrence of the crime, and a punisher after it, and from here this research came to address the issue of the criminal responsibility of ministers and related issues and scientific links under the title: "The Legal Nature of the Criminal Responsibility of Ministers in Palestinian Legislation and Islamic Jurisprudence"

**The importance of the topic:**

The importance of the topic and the reasons for choosing it are highlighted in the following:

1-This issue related to the criminal responsibility of the ministers in terms of the nature and nature of what happened according to the Palestinian law and Islamic Legislation.

2-Show the importance of studying the laws and legislations that talked about the criminal, civil and political responsibility of the

ministers and have dealt with the issues of that in terms of description, originality and comparison.

3-A statement that knowledge of the legal and legal texts regarding the criminal, civil and political responsibility of ministers is an important issue for researchers and specialists through the issues they deal with in real life .

4-Touching this topic to contemporary reality, and the importance of the objective confusion associated with it, which necessitates legal and Islamic legal studies to address these issues with the aim of scientific treatment.

### **Research objectives:**

They are represented by the following:

1-Determine what the ministers' criminal responsibility procedures are and explain the related concepts in order to arrive at the legal and legal perspective related to that.

2-Explain how the legal and jurisprudential basis for the criminal responsibility of ministers is in the legal and legal concepts

3-Study what is related to the issues of the relationship of political responsibility with the criminal responsibility of ministers, as well as their civil responsibility, in order to determine this issue accurately and clearly.

### **Research problem:**

The research problem revolves around the answer to the main question, which reads: What are the legal nature of the criminal responsibility of ministers in the Palestinian and Islamic legislations ?

Several other questions have branched out from this question:

1-What is the concept of criminal responsibility and civil liability of ministers in the legal and Islamic legislation concepts?

2-What is the legal nature of the responsibility of ministers in its various forms, including criminal, civil and political?

3-What is the relationship of political responsibility to criminal responsibility?

4-What is the legal and jurisprudential basis for criminal responsibility in Palestinian legislation and Islamic jurisprudence?

### **Research methodology:**

The researchers 'approach was as follows:

Reliance on the descriptive and analytical approaches, by stating the nature of the criminal responsibility of ministers and the nature of the relationship with other forms of their responsibility in Palestinian and Islamic legislation, as well as analyzing the texts and legislations related to that with the aim of identifying the implications of scientific and objective research. Through reference to specialized references on research topics.

**Content of the research:**

This study - in addition to the introduction and conclusion - came in three demands, as follows:

**The first requirement:** the criminal responsibility and civil liability of ministers, concepts and essences, and the relationship between them in Palestinian legislation and Islamic jurisprudence

**The second requirement:** the legal and jurisprudential basis for the criminal responsibility of ministers in Palestinian legislation and Islamic jurisprudence

**The third requirement:** the relationship of political responsibility with the criminal responsibility of ministers in Palestinian legislation and Islamic jurisprudence

**The first requirement: The criminal responsibility and civil liability of ministers, concepts, essences and the relationship between them in Palestinian legislation and Islamic jurisprudence**

Responsibility morally refers to: the person's commitment to what he makes in word or deed, and according to the law it refers to the obligation to correct the mistake on others<sup>1</sup>.

**The first section: Definition of criminal responsibility**

Criminal responsibility is defined as "the obligation to bear the legal consequences of the availability of the elements of the crime and the subject matter of this obligation and to impose a penalty or a

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<sup>1</sup> Al-Fayrouz Abadi, Muhammad Ibn Ya'qub, *The Comprehensive Dictionary*, Cared by Hassan Abdel-Manan, House of International Ideas, 2004 AD, Amman, Jordan, p. 774, Ibrahim Mustafa and others, *Al-Waseet Dictionary*, Islamic Library, Istanbul, Turkey, p. 411.

precautionary measure specified by the penal legislator in the event of any person's liability"<sup>1</sup>.

Responsibility in the concept of Islamic jurisprudence; Requires commitment for asking someone to know its consequences and the nature of the obligation imposed on him with the aim of correcting the defect and correcting the error. Criminal responsibility in the terminology of Islamic jurisprudence means: that a person bears the results of the forbidden actions that he commits voluntarily while he is aware of their meanings and consequences. Therefore, if someone as a child or a mad man commits something wrong or against the law, the punishment doesn't apply to him , because he doesn't know it's meaning or consequences<sup>2</sup>, and therefore it is based on three foundations: the first of which is that the person performs a forbidden act, and the second: that the perpetrator is to be willing not forced . And the third: for the perpetrator to be aware, and if these foundations are found, responsibility is found, and if one of them is absent, then they are absent<sup>3</sup>.

The criminal responsibility of ministers is defined as: it is the determination of responsibility for crimes committed by senior statesmen during the conduct of their work, and it is the bond that arises between the state and the individual who proves through judicial procedures the validity of attribution of the act constituting the crime to him when it includes all the legal elements required by the

<sup>1</sup> Azza Abdel Majid, *Responsibility of the President of the State*, Ain Shams University, PhD Thesis, 2008, p. 396.

<sup>2</sup> for more information about Eligibility and its symptoms see: *The Study of Eligibility and its symptoms, whether they are divine, such as childhood, madness, dementia, and forgetfulness ... or acquired such as ignorance, drunkenness, error and coercion ...* , Al-Bukhari, Ala Al-Din Bin Abdul Aziz, *Revealing the Secrets of the Origins of Pride of Islam Al-Bazdawi*, The Arab Book House, Beirut, 3rd Edition, 1997 AD, 4 / 435-436, Fakhr al-Din Othman bin Ali, *Explaining the Facts Explaining the Treasure of the Minutes*, Cairo, Dar Islamic Books, d. T., 1313 AH, 3/241.

<sup>3</sup> Abdel Qader, Odeh, *Islamic criminal legislation compared to positive law*, The Resala Foundation, Beirut, Lebanon, 14th Edition, 2000 AD, 1/392.

legislator to describe the act as Crime, with no cases of exemption from liability<sup>1</sup>.

The criminal responsibility of the minister - if he commits any of the crimes stipulated in the penal code or in the private law - is to be tried while assuming his ministerial position and performing his job duties. And the characteristic of these crimes and the peculiarity of the position the minister occupies and the power he enjoys that makes him dominate state affairs, and because of the influence he possesses; It has been recognized that the criminal responsibility of ministers for crimes that they may commit to harm the public interests of the state, bearing in mind that the constitutions have given ministers a special privilege in not subjecting them to the regular judiciary, whether in terms of prosecution and investigation or terms of the trial, due to the damages that the intervention of ordinary courts may cause. It is attached to the reputation of the minister in particular, and the ministry he occupies in general.

Therefore, we find that there is a special body that accuses ministers and prosecutes them for the crimes they may commit while performing their job, as this is not related to the crimes that he commits in his normal life and his private relations, if he commits any crime that has nothing to do with his job; The regular judicial authorities are the ones competent to deal with it in this case according to the known legal rules in this regard<sup>2</sup>.

### **The second section: definition of civil liability**

Civil liability is defined as the obligation of a person to indemnify him for damage caused to others, whether this obligation is specific or not, and it is a contractual liability if there is a breach of an existing contract between the fault and the aggrieved, and liability for default if there is a breach of a general legal obligation<sup>3</sup>.

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<sup>1</sup> Azza Abdel Majid, *Responsibility of the President of the State*, PhD Thesis, Ain Shams University, 2008, p. 395.

<sup>2</sup> Rabab Al-Tal, *Ministerial Responsibility in Jordanian Legislation*, Master Thesis, University of Jordan, 1995, p.50.

<sup>3</sup> Youssef Al-Azmi, *The Minister's Political Responsibility in the Parliamentary System*, Previous Reference, pg. 82.

The civil responsibility of ministers is evident by obliging them to pay compensation for their personal actions resulting from mistakes or unlawful damages to others, whether this mistake leads to a criminal offense and causes criminal responsibility or not, as civil liability rests on the minister's private funds, and ministers are also asked to compensate for the damages that may be caused. In the state, as a result of their own mistakes, the current Ministerial Trial Law has stipulated that it asks the ministers in a civil order.

according to the provisions of the civil law<sup>1</sup>.

Civil liability is based on a person's obligation to compensate for the damage he caused to another person, and it is organized into two types: contractual liability and default liability, **and this is explained in the following:**

1-Contractual liability: It is based on the breach of a contractual obligation, and it is a penalty for non-implementation of the contract, as the existence of contractual liability requires the existence of a valid contract that is enforceable that the debtor did not implement, and as a result of failure to implement it, the creditor was damaged. , Harm, causation<sup>2</sup>.

Contractual error: It is the debtor's failure to implement his obligation arising from the contract, and then the debtor must implement the contract to which he committed himself, and the contractual error has been known; It is a positive or negative deviation in the debtor's behavior that leads to his being blamed, and we distinguish between two types of obligation; A commitment to achieving a goal where the mistake is not to achieve the goal, and a commitment to exercise care in which the mistake is not to take the required care<sup>3</sup>.

The burden of proof falls upon the creditor, and he must prove that the debtor did not implement his obligation, and that he suffered harm as a result of failure to implement, and here the causal relationship is rejected and he is entitled to compensation unless he insists on the

<sup>1</sup> See the text of Article (9) of the Law on Trial of Ministers, No. (35) of 1952, which states that "Ministers are civil responsible in accordance with the provisions of the Civil Law."

<sup>2</sup> Youssef Al-Azmi, *The Minister's Political Responsibility in the Parliamentary System*, Previous Reference, pg. 85.

<sup>3</sup> same reference, p. 85.

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same causal relationship by the debtor by proving the foreign cause<sup>1</sup>. In order for liability to arise from the debtor, there must be harm to the creditor, and the damage is of two types: material and moral, and material: it is what afflicts a person in his financial responsibility or body, and moral: what afflicts the person in his emotions and feelings, and as for compensation, this is done through direct harm Indeed<sup>2</sup>.

2-Default liability: It is based on breaching a legal obligation not to harm others. And its pillars are the pillars of contractual responsibility, of action, harm, causation relationship.

The harmful act: that is, the existence of an infringement or deviation and does not require the existence of error, and the harm: that the infringement leads to causing harm, and in the absence of the harm, the lawsuit is not accepted due to lack of interest, and the burden of proving the harm falls on the victim and he has the right to prove it by all methods of proof, and compensation for the damage is if it occurs Default liability for the achieved damage, and it may be a state, i.e. it occurred in an act or a future, and as for the causal relationship, it is not possible to ask the perpetrator of the act for damages that did not result from his act, so there must be a causal relationship between the harmful act and the harm that was caused to others<sup>3</sup>.

It is clear from the foregoing that political responsibility differs from civil liability that is based on civil error and criminal responsibility that is based on the commission of criminal acts.

**The second requirement: The legal and jurisprudential basis for the responsibility of ministers in Palestinian legislation and Islamic jurisprudence**

Crime is a social threat that affects rights worthy of criminal protection, and it threatens the human entity in general in its security, stability and life order, and based on this risk, we find that the scholars of Sharia and law have stood on this issue and paid clear attention to it in terms of study and treatment, because the basic function of criminal law Represented by the protection of the social rights and interests on

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<sup>1</sup> Anwar, Sultan, *Commitment in Jordanian Civil Law, A Comparative Study, 1st Edition, University of Jordan Publications, 1987, pg. 231.*

<sup>2</sup> same reference, p. 231.

<sup>3</sup> Rabab Al-Tal, *Ministerial Responsibility in Administrative Legislation, Master Thesis, The University of Jordan, 1995, p. 48.*



which the community entity and its pillars are based. Therefore, the criminal street has committed to criminalizing voluntary acts, if they are exposed to one of these rights by wasting and destroying them and counting them as crimes that merit the responsibility of the perpetrator for them and thus his punishment for them<sup>1</sup>.

The Islamic legislation considers that restraining, deterring and reforming the offender is one of the purposes that are intended to be achieved from the application of the punishment, because the limits of the Islamic Legislation are prohibitions before the occurrence of deterring after it<sup>2</sup>. And by Allah's mercy and wisdom, Allah the Almighty has ruled the ways of deterring these felonies, the purpose of these strict laws and rules are to perfectly convincing not to let anyone commit a crime or felony without thinking and considering its consequences and its results, while not exceeding what the offender deserves of deterrence<sup>3</sup>, nor boundaries, Allah has set them up to stop the offender from committing them, so if someone's instincts would lead him to commit what is prohibited, God made of the restriction of boundaries that would deter the ignorant, and let him be aware of the pain of punishment<sup>4</sup>.

It was stated in the book *Al-Ahkam* by Al-Amedi: "We learned based on the status of the ordinary citizens, that It is impossible for the ruler to be completely just if the Laws were only to justify the actions of the ruler and his ministers, This is not by the way of it being obligatory, but by looking at the familiar habit of Islamic Legislations<sup>5</sup>.

<sup>1</sup> Yousef Al-Azmi, *The Minister's Political Responsibility in the Parliamentary System: A Comparative Study of the Kuwaiti and Jordanian Legislation*, Master Thesis, Al al-Bayt University, 2016, p. 80.

<sup>2</sup> Al-Shawkani, Muhammad bin Ali, *Fateh Al-Qadeer*, Al-Babi Al-Halabi Press, Cairo, 2nd Edition, 1964, 4/114

<sup>3</sup> Ibn Al-Qayyim, Muhammad bin Ab Bakr, *Informing the signatories on the authority of the Lord of the Worlds*, Foundation for the Message, Edition 1, 2/95.

<sup>4</sup> Al-Mawardi, Ali bin Muhammad, *Al-Sultani Rulings and Religious States*, Al-Babi Al-Halabi, Cairo, ed. 2, 1961 AD, p. 221.

<sup>5</sup> - Al-Amidi, Ali bin Muhammad, *Al-Ahkam fi Usul Al-Ahkam*, the Islamic Office, Beirut, dt, dt, 3/260

because the intention of stating legislation is to bring benefit or to avoid harm, or sometimes both of them, because Allah is just, those legislations are convenient to mankind<sup>1</sup>.

Criminal responsibility is one of the most important basic rules in the penal code as it is an integrated theory, and despite its importance, the law has neglected to control its features, and is content with indicating in separate texts some of its provisions, and criminal liability is no longer a purely material responsibility as it was in the old criminal legislation, It is based at the present time on the basis of moral or ethical responsibility,

Or it is a set of conditions that create personal blame directed against the perpetrator of the crime, and these conditions appear from the legal point of view as a rejected expression of the personality of the perpetrator, or they hold the person responsible as a result of his actions and his accountability for them because he acted with awareness to the results of his deeds, and knowing it's meaning and consequences and that it was done willingly by him<sup>2</sup>.

So criminal responsibility; is a legal relationship established between the individual and the state whereby the individual is obligated, vis-à-vis the public authority, to respond to his action contrary to the legal rule and to submit to the reaction resulting from the violation<sup>3</sup>. It performs as a penalty for harming the group, whose protection is required to ward off danger from it by imposing a penalty on the person responsible in it as a disincentive and deterrent to others. Exceptional cases or when the punishment is simple, as it depends on the acts specified in the texts of the law, to name a few, "There is no crime and no punishment except by a text", in order to protect individual freedom<sup>4</sup>.

Since the criminal offense is every act that the legislator forbids and decides for its perpetrator a criminal sanction; The determination of criminal responsibility is based upon three elements:

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<sup>1</sup> Al-Amadi, *Ruling on Usul Ahkam*, 3/271

<sup>2</sup> *Ibid*, p. 81.

<sup>3</sup> *Ibid*, p. 81.

<sup>4</sup> Ahmad Al-Sabili, *The Political Responsibility of the Head of State in the Situational Systems and Islamic Political Thought*, Master Thesis, Ain Shams University, 1990 p. 54.

**Criminal behavior:** It is the material activity that the perpetrator commits in a tangible way, and through which the criminal offense that results in a criminal punishment is embodied.

**Criminal outcome:** it is called the element of harm, and it is that tangible fact resulting from the behavior of the offender in a way that affects a criminal interest protected by the criminal law.

**Causal relationship:** It is the link between the material element and the criminal outcome, that is, the person who is a suspect of the crime must himself be the perpetrator so that it does not go beyond him to anyone else, and there must be a causal link between the personal error of the perpetrator and the result of that behavior<sup>1</sup>.

The opinion of jurisprudence goes on not considering criminal responsibility as one of the crime pillars, as it does not arise unless all the elements of the crime are available, and it is only related to the human being, As for the rest of the other beings, this responsibility has nothing to do with it, while the other opinion goes to counting criminal responsibility as one of the pillars of the crime, under the pretext that not every behavior contrary to the law committed by a person is subject to punishment, but rather this behavior must be personally accountable for him, so accountability here It relates to the perpetrator himself and not the act itself, and criminal responsibility arises before the perpetrator when he has criminal eligibility<sup>2</sup>.

It seems that criminal responsibility is a responsibility concerned with the obligation of ministers to assume their responsibilities towards the crimes they committed, when all elements of criminal responsibility are available to them, due to their importance in combating crime.

### **The third requirement: The relationship of political responsibility with the criminal responsibility of ministers in Palestinian legislation and Islamic jurisprudence**

Responsibility in general is the obligation to bear the legal consequences resulting from the existence of the elements of the crime<sup>3</sup>, and the subject of this obligation is the punishment or

<sup>1</sup> Azza Abdel Majid, *Responsibility of the President of the State*, Ain Shams University PhD Thesis, 2008, pg. 197.

<sup>2</sup> *Ibid.*, P 2011.

<sup>3</sup> Naguib, Mahmoud, *Explanation of the Lebanese Penal Code, General Section*, Second Edition, Dar Al-Naqri for Printing, Beirut, 1975, p. 22.

precautionary measure that the law imposes on the person responsible for the crime, as criminal responsibility constitutes an important step towards establishing the ministerial political responsibility, which is an essential component of the components of the parliamentary system. At the beginning of the eighteenth century, the parliament's resort to moving criminal accusations retreated, as the government's emergence from parliament became a familiar and applicable rule, in addition to the escalation of parliament's power in controlling the choice of government members or pushing them to withdraw<sup>1</sup>, and this leads us to talk about political responsibility And the nature of its relationship and its distinction from the criminal responsibility of ministers, and a statement of that:

**The political responsibility of ministers:** a legal mechanism for assessing the behavior and actions of the executive authority in a certain period, and it includes the governing authority's commitment to responsibility before the national will in accordance with special procedures stipulated in the constitution, and that is the intention of its behavior and actions while carrying out the tasks of its functions<sup>2</sup>.

It was said that it is: the control and accountability of the person assigned with political power for breaching his obligations regardless of their source (constitutional, legal, principles of natural law and rules of justice) that would endanger the interests of the country and result in his dismissal, provided that the control and accountability are by the original authority holder (the people). Or his representative<sup>3</sup>.

The political ministerial responsibility represents the essence of ministerial responsibility in political and parliamentary systems, and in fact, the criminal responsibility of the minister; It is the basis of ministerial responsibility before the legislative authority, and it is intended to transfer the burden of responsibility for the actions of the executive authority from the -above accountability- king to his advisors and his ministry, so a criminal accusation has become a

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<sup>1</sup>Hanim Salem, *The Political and Criminal Responsibility of the President of the Republic: A Comparative Study*, Journal of Legal and Economic Research, Menoufia University, Issue (43), Vol. 26, 2016, P.814.

<sup>2</sup>Ibid, p. 815.

<sup>3</sup> Azza Mustafa Hosni Abdel Majid, *Responsibility of the President of the State*, Ain Shams University PhD Thesis, 2008, pg 197.

criminal procedure through which the legislative authority can place ministers and the king's advisors the subject of accusation if it believes that they have committed a crime against their country, then send them to trial, Then, the accusation method took a new form, which is political criminal responsibility, so Parliament used the accusation not only against acts that were criminal or misdemeanor, but this was also against all grave errors even if it was not stipulated in the Penal Code, so political responsibility did not appear suddenly but rather paved Its emergence in earlier stages, as they say, emerged from the core of criminal responsibility, which is the root of political responsibility, and there was a middle stage in which criminal responsibility was mixed with political responsibility<sup>1</sup>.

The jurisprudence believes that political responsibility does not depend on the existence of legal texts regulating it. It is sufficient for their establishment to be based on the rules of morality, and to appear in the form of moral responsibility. Accordingly, political responsibility may appear in the form of legal responsibility when there is a violation of a legal text, and it appears in the form of moral responsibility when the violation is not in a legal text but rather a violation of the rules of morality and it is sufficient to trigger it by the will of the person who committed the violation<sup>2</sup>.

Political responsibility is not a personal responsibility, and it cannot exist retroactively, and it is not sufficient to direct it from the difference of views between members of parliament and the government, so if the government submits a bill and then the parliament rejects it, or the parliament has submitted a proposal and the government refuses to implement it, this difference does not matter that Lead to the resignation of the government; Because the political responsibility of the government relates to an important political issue that proves that the government has made mistakes about it, and this means that political responsibility does not fall except on those who occupy political power, and it responds to all acts

<sup>1</sup> Mishari Al-Zoubi, *The Minister's Criminal Responsibility in Jordanian and Kuwaiti Law*, Master Thesis, Middle East University, Jordan, 2011, pp. 1-3.

<sup>2</sup> *Ibid*, p. 11.

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and actions of presidents and ministers that violate the public order in the state, and its punishment is nothing but removal from power<sup>1</sup>.

Thus, the political responsibility of the ministers is for all their actions and actions that they perform, given their connection to the job (the ministry), whether it is legitimate or unlawful, intentional or unintentional. This is the requirement of justice that Islamic legislation cares about achieving on earth by urging people to act according to it in all matters, between him and himself and himself and others, between the ruler and the ruled, between the rich and the poor, and between the oppressor and the oppressed, for everyone is equal as the teeth of a comb before divine justice. According to Allah's saying in the Holy Quran: " Indeed, Allāh orders justice and good conduct and giving [help] to relatives and forbids immorality and bad conduct and oppression. He admonishes you that perhaps you will be reminded<sup>2</sup>.

And His saying in the Holy Quran: O you who have believed, be persistently standing firm for Allāh, witnesses in justice, and do not let the hatred of a people prevent you from being just. Be just; that is nearer to righteousness. And fear Allāh; indeed, Allāh is [fully] Aware of what you do<sup>3</sup>.

It also appears that the political responsibility of the ministers: "Parliament has the right to withdraw confidence from the whole ministry as a unit or from one of the ministers, and this parliamentary action entails the necessity of the resignation of the ministry or the minister as a result of the withdrawal of confidence from them, or that it topple the ministry or the minister if he loses the confidence of parliament<sup>4</sup>.

And when the responsibility of ministers before Parliament was transformed from criminal to political, the criminal responsibility of ministers remained, but its forms differ from what was the case when ministerial responsibility emerged, and on the other hand, the scope of ministerial political responsibility in general is either the political

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<sup>1</sup> Moheb Yassin Abdel Qader Kabiri, *Powers and Responsibilities of the President of the Republic*, PhD Thesis, Cairo University, 2013, pp. 189 ff.

<sup>2</sup> Surah An-Nahl, Verse 90.

<sup>3</sup> Surah Al-Ma'idah, Verse 8.

<sup>4</sup> Mishari Al-Zoubi, *The Minister's Criminal Responsibility in Jordanian and Kuwaiti Law*, p.13.

responsibility is individual, i.e. directed to the minister himself and may extend To include the rest of the members of the Council of Ministers, and thus it is a joint responsibility among the members of the Council of Ministers as a whole, in the event of political responsibility<sup>1</sup>.

Abu Bakr Al-Siddiq spoke to the people, praising Allah and, then he said: People, I have become your ruler , and I am not better than any of you. If I did well be with me , and if I did wron , then correct me ,honesty is an obligation , Lie is betrayal ,and the weak among you is strong in front of me until I bring back what belongs to him , and the strong among you is weak in front of me until I take what he took from you.

This shows how important to rectify and ruler's and minister's political responsibility according to the Islamic Regulations<sup>2</sup>.

Criminal responsibility differs from political responsibility in several aspects, as follows<sup>3</sup>:

1-In terms of procedures: The procedures of political responsibility differ from the procedures of criminal responsibility, whether at the stage of accusation, investigation or judgment.

2- In terms of punishment: The penalty for political responsibility is removal from office, while the penalty for criminal responsibility is a corporal punishment imposed on the person.

3-In terms of compensation: It is true that political and criminal responsibility both agree that each of them has a judicial nature and the case is considered before a court, but in the event of a conviction for political responsibility, all persons, including the state, are entitled to compensation for damages due to actions that were subject to punishment, This can only be done through a genuine judicial process.

<sup>1</sup> Anaam Al-Khafaji, *the political responsibility of the ministry in the parliamentary system in some contemporary constitutional systems. Journal of the Humanities, University of Babylon, Vol (22), No. (1), 2015, p. 389.*

<sup>2</sup> Bassiouni, Mahmoud Sharif, *International Documents Concerning Human Rights, Volume Two, Al-Shorouk House, Cairo, 2003.*

<sup>3</sup> Hanim Salem, *The Political and Criminal Responsibility of the President of the Republic: A Comparative Study, Journal of Legal and Economic Research, Menoufia University, Issue (43), Volume (26), 2016, P.826.*

In the event of a conviction in criminal responsibility, compensation is paid to the person who suffered the damage.

4-In terms of breaking the Law: political responsibility may arise without error, as it suffices to publish it just a difference in viewpoints, as for criminal responsibility, it does not arise except through grave mistakes committed by the minister, and error means committing an act contrary to the laws, regulations and regulations, and then violates the requirements The job is as an unconstitutional act.

One of the established rules in the law is that ministers are responsible individually and jointly, according to the text of Article (74) of the Palestinian Basic Law, which states that:

- The Prime Minister is responsible to the President of the National Authority for his actions and the actions of his government.
- Ministers are accountable to the Prime Minister, each within his jurisdiction, and for the work of his ministry.
- The prime minister and members of his government are individually and collectively responsible before the Legislative Council<sup>1</sup>.

Accordingly, political responsibility is closely related to those in charge of the activities of the executive authority, including ministers, and it is based upon failure to fulfill constitutional obligations or failure to implement the state's general policy, and this is the most prominent feature that distinguishes it from criminal responsibility, as the basis of political responsibility is subject to the assessment that states the minister's contravention the general policy of the state, and therefore it is surrounded by ambiguity in terms of its subject matter and legal nature, in addition to criminal responsibility.

### **Conclusion**

After this station in dealing with the legal nature of the criminal responsibility of ministers in Palestinian legislation and Islamic jurisprudence, it is possible to summarize the most important findings and recommendations of this research as follows:

### **Results:**

-Acknowledgement of the criminal responsibility of ministers for crimes that they may commit that harm the public interests of the

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<sup>1</sup> Article (74) of the amended Palestinian Basic Law of 2003.



state, bearing in mind that the constitutions have given ministers a special privilege in not subjecting them to the ordinary judiciary, whether in terms of prosecution, investigation, or trial.

-The civil responsibility of the ministers is evidenced by obliging them to pay compensation for their personal actions resulting from wrongful mistakes or damages to others, whether this mistake leads to a criminal offense and causes criminal responsibility or not.

-Civil responsibility is focused on the minister's private funds, and ministers are also asked to compensate the damages that may be caused to the state as a result of their own mistakes, in accordance with the provisions of the civil law.

-Criminal responsibility constitutes an important step towards the consolidation of ministerial political responsibility, which is an essential component of the parliamentary system.

-That the political responsibility of ministers is for all their actions and behaviors that they perform, given their connection to the job (the ministry), whether it is legitimate or unlawful, intentional or unintentional, and this is the requirement of justice that Islamic legislation has been concerned with achieving on the ground by urging people to act accordingly. In all matters, between him and himself and himself and others, and between the ruler and the ruled.

-Political responsibility is closely related to those in charge of the work of the executive authority, including ministers, and it is based upon failure to fulfill constitutional obligations or failure to implement the general policy of the state, and this is the most prominent characteristic that distinguishes it from criminal responsibility.

### **Recommendations:**

- Given the position of ministers, we recommend that mechanisms and foundations be established that in turn regulate the investigation procedures, to be more accurate and confidential, and to provide an opportunity to defend themselves during the investigation stage.

- Strengthening aspects of oversight over the work of ministers by the Legislative Council, because of their prominent role in preventing mistakes and promoting the smooth running of government work.

Empowering the Anti-Corruption Commission and strengthening its role in prevention and combating ministerial corruption, in order to enhance integrity and transparency in the country.

-Empowering the role of the public prosecution so that it can directly carry out its powers and authorities, without referring to the Legislative Council or waiting until the minister is referred to the prosecution by the Legislative Council or the government .

Finally:

**List of sources and references:**

**First: the sources**

**A-The Quran.**

**b- Laws:**

1-the Law on Trial of Ministers, No. (35) of 1952, which states that “Ministers are civil responsible in accordance with the provisions of the Civil Law” .

**Second: References**

**A - Books:**

1. Ibrahim Mustafa and others, Al-Waseet Dictionary, Islamic Library, Istanbul, Turkey.
2. Ahmed Al-Sabili, The Political Responsibility of the Head of State in Manifest Systems and Islamic Political Thought, Master Thesis, Ain Shams University, 1990
3. Anwar Sultan, Commitment in Jordanian Civil Law, A Comparative Study, 1st Edition, University of Jordan Publications, 1987.
4. Urdi, Ali bin Muhammad, Al-Sultani Rulings and Religious States, Al-Bab Al-Halabi, Cairo, 2nd Edition, 1961 AD
5. Al-Bukhari, Ala al-Din Ibn Abd al-Aziz, Revealing the Secrets of the Origins of the Pride of Islam Al-Bazdawi, The Arab Book House, Beirut, 3rd Edition, 1997 AD, 4 / 435-436
6. Al-Shawkani, Muhammad Bin Ali, Fath Al-Qadeer, Al-Babi Al-Halabi Press, Cairo, 2nd Edition, 1964.

7. Fakhr al-Din Othman bin Ali, Explaining the Facts, Explaining the Treasure of the Minutes, Cairo, Dar Al-Kutub Al-Islami, d. T, 1313 AH.
8. Al-Fayrouzabadi, Muhammad bin Ya'qub, The Dictionary of the Ocean, taken care of by Hassan Abdul Manan, House of International Ideas, 2004 AD, Amman, Jordan
9. The amended Palestinian Basic Law of 2003.
10. Law on Trial of Ministers No. 35 of 1952.
11. Ibn Al-Qayyim, Muhammad bin Ab Bakr, Informing the Signatories of the Lord of the Worlds, The Resala Foundation, 1st Edition.
12. Naguib Mahmoud, Explanation of the Lebanese Penal Code, General Section, Second Edition, Dar Al-Naqri for Printing, Beirut, 1975.

#### **B - Theses:**

1. Rabab Al-Tal, Ministerial Responsibility in Administrative Legislation, Master Thesis, University of Jordan, 1995.
2. Moheb Yassin Abdel Qader Kabiri, Powers and Responsibilities of the President of the Republic, PhD Thesis, Cairo University, 2013.
3. Azza Abdel Majid, Responsibility of the President of the State, PhD Thesis, Ain Shams University, 2008.
4. Mishari Al-Zoubi, The Minister's Criminal Responsibility in Jordanian and Kuwaiti Law, Master Thesis, Middle East University, Jordan, 2011.

#### **C - Journal Articles:**

1. Anaam Al-Khafaji, The Ministry's Political Responsibility in the Parliamentary System in Some Contemporary

- Constitutional Systems, Journal of Human Sciences, University of Babylon, Volume (22), Issue (1), 2015.
2. Hanim Salem, The Political and Criminal Responsibility of the President of the Republic: A Comparative Study, Journal of Legal and Economic Research, Menoufia University, Issue (43), Volume (26), 2016.