

NATURE OF THE GOVERNING SYSTEM UNDER THE PALESTINE BASIC LAW OF 2003

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Abstract

The different governing systems are classified based on the distribution and separation of the three powers the Legislative; Executive; and Judicial and the nature of the relationship between them. The problem of the research lies in determining the features and location of the governing system in Palestine in comparison with the representative systems in the world, and the challenges and dilemmas facing it. Therefore, the research problem can be formulated in what is the nature of the governing system in Palestine? The research aims to determine the governing system in Palestine, which is one of the most complex topics, especially since the Palestinian state is in a stage of development and building of its institutions, and the research focuses on explaining the governing system in Palestine compared to the representative systems in the world. To achieve the objectives of the research socio-legal research using the qualitative approach was engaged. The research concluded that the governing system in Palestine is closer to a mixed system. However, it lacks an important feature of the mixed system, which is the balance between the Legislative Council and the Executive authority. Accordingly, some provisions of the Palestinian Basic Law of 2003 need to be amended and reformulated so that the governing system in Palestine becomes a pure mixed system.

Keywords: Governing System, Basic Law of 2003, Political System, State of Palestine.

1. INTRODUCTION

Since its inception, the Palestinian political system has suffered from multiple problems in the context of the relationship between the three authorities and the powers of each one of them, but the problems of the relationship between the two heads of the Executive authority and the overlapping of powers between the President of the National Authority and the Council of Ministers and their lack of clarity in many cases were the most destructive to the history of the Palestinian legal system. (Abu Rayala and Shehab, 2020).

The Palestinian Constitutional Legislator stipulated in Article (5) of the Basic Law of 2003 that “The governing system in Palestine shall be a democratic parliamentary system, based upon political and party pluralism. The President of the National Authority shall be directly elected by the people. The Council of Ministers shall be accountable to the President and the Palestinian Legislative Council.” It is evident from the text of the previous Article that the Palestinian Constitutional Legislator has not adopted any of the governing systems that exist in the world, only stipulating that it is a representative democratic system, which made it a subject of discussion and extrapolation to clarify the features and nature of this system in order to know the governing system in Palestine. (Saad, 2019).

The importance of research is highlighted in determining the nature of the governing system in Palestine. This research is considered one of the most complex topics due to its impact on the state as a whole, especially that the Palestinian State is in the stage of development and building of its institutions, and the problem of research lies in determining the features and location of the governing system in Palestine. (Abu Rayala).

In addition, the different governing systems are classified based on the distribution and separation of the three powers and the nature of the relationship between them. In other words, based on how the state exercises its three functions the Legislative; Executive; and judiciary. This distribution and separation start from building political institutions for the political system according to the principle of separation of powers. The principle of

separation of powers aims for each of the three authorities to monitor the other authority and to prevent it from exaggerating and misusing its powers or expanding its controls. (Yousef, 2016).

Moreover, constitutional law jurists classify the separation and distribution of powers into two main forms according to the nature of the relationship between powers, and they are flexible and rigid separation of powers. Therefore, the governing systems are divided according to the state of separation and distribution powers into the parliamentary, Presidential, and mixed systems. (Yousef)

2. ANALYSIS AND DISCUSSION

2.1 Nature of the Governing System in Palestine

Knowing the state's structure is one of the essential issues in building a constitutional and democratic governing system. The constitutions do not usually explicitly reveal the governing system that it adopts. (Alani, 1986). In addition, each constitution establishes a balance that is consistent with the conditions the state is going through. It is often the pursuit of a stable system of governance to achieve peace. The establishment of an effective governing system is to assess the advantages and disadvantages of each governing system. (Shair, 2000)

The following will clarify the most famous governing systems in the world and then explain the governing system in Palestine.

2.1.1 Presidential System

The presidential system is one of the representative systems that are based on the principle of complete separation of powers, in which functions are divided between elected authorities, each of them is independent of the other in exercising one of the functions of the state. Therefore, the presidential system establishes a kind of balance and equality between the authorities, in which the Executive authority does not follow the Legislative Council, but rather exercises its functions in complete independence from the Legislative Council. (Francis and Fagbadebo, 2016). In addition, the Executive authority is distinguished by the strength of its position in this type of system, given its assumption by an elected President of the state who helps him in the performance of the executive function of some Ministers. (Fahmy, 1985).

The main feature of the presidential system is that the Executive authority and Legislative Council are regarded as separate agents from the electorates. Therefore, it is called the presidential system, which is distinguished from other parliamentary systems by several characteristics. (International Foundation for Democracy and Elections, 2011).

2.1.1.1 Characteristics of the Presidential System

The presidential system is distinguished by the existence of an elected President of state who exercises actual functions in the executive field, and the complete separation between the Legislative, Executive, and Judiciary, based on a balance and equality between these powers. These characteristics are:

a) Exercising the Executive Functions by the Elected President of the State

The presidential system is based on the principle of individual Executive, which is assumed by an elected President of the state, who effectively performs the executive function in the field of governance and administration. He is also combined between the President of state and the Council of Ministers at the same time. (Duverger, 1980).

The President in the presidential system does not assume his position through appointment or inheritance, such as the kingly system. But rather through his election by the people, whether by direct or indirect i.e., universal suffrage. Thus, this system is applied only in countries with a presidential system. (Daily, 2009).

In addition, the election of the President by universal suffrage makes him a representative of the will of the nation, which gives him an important place and a strong position in the political system, in which the President heads the state and Council of Ministers, and directly returns to him all aspects of the Executive in the state. (Daily). Moreover, the executive matters are carried out by a Council of Ministers, where the President of state appointing and dismissing them, and they are accountable to him alone without Legislative Council in carrying out the executive functions assigned to them. (Al-Tamawi, 1988)

b) Complete Separation of Authorities

The complete separation of authorities is an essential characteristic of the presidential system where each of the three authorities in the state is independent of the other in exercising its functions, and the manifestations of this independence are illustrated below. (Mbaya1, Tella, and Audu Adole, 2013).

Full independence of the Legislative Council in exercising the legislative function. Therefore, this is led that the Legislative Council is not interfering in appointing the Ministers or their dismissal or the use of any oversight tool against them, such as a question, interrogating, or withdrawing confidence. (Mbaya1, Tella, and Audu Adole). Moreover, the Executive in the presidential system does not have any functions to confront the Legislative Council, such as proposing draft legislation. The Executive has also no right to dissolve the Legislative Council, invite it to convene, the suspension, or postponement of its session, where the Executive takes the executive function without interference in the Legislative Council. (Shugart, 2005).

This separation between the two authorities in the presidential system is strengthened by the inadmissibility of combining between membership the Legislative Council and the Ministry, where the Executive exercising its functions independent from the Legislative Council. (Croissant and Merkel, 2005).

Additionally, the Judiciary exercises its function in complete independence from the Legislative Council and Executive authority. In the presidential system, the Judiciary consists of courts and judges, and special guarantees to ensure that the Legislative Council and the Executive do not interfere in the judicial field, whether in terms of forming the Judiciary or selecting its members. Members of the Judiciary have also immunities that guarantee their independence in exercising the judicial functions. (Croissant and Merkel).

The complete separation of authorities in the presidential system, even though it is characterized by complete separation of authorities in theory. However, the constitutions of the countries that adopt this system, such as the American Constitution, recognize in practice some exceptions, which establish a kind of cooperation between the authorities, as the Legislative Council's approval of treaties to enforce them, and the President's right to object the legislation passed by Legislative Council and other manifestations of cooperation and mutual control between the two authorities. (Abdel Aziz, 2000).

2.1.1.2 Applications of the Presidential System

The United States of America is the cradle and birth of the presidential system. The framers of the American Constitution of 1787 were influenced by the ideas of "Montesco" on the principle of separation of authorities. (Zalmanovitch, 1986).

This principle was translated into the American Constitution through the complete separation of the authorities based on the organic and functional independence of these authorities. It is also independent in the exercise of the assigned function without interference from other authorities. However, despite the political system in the United States of America establishing a complete separation between the three authorities, the constitutional practice defined some aspects of cooperation and mutual control between the authorities, especially between the Executive authority and the Legislative Council, to reduce the complete separation between them, which is obvious through the areas of cooperation between these two authorities and what each of them has in the face of the other authority. (Zalmanovitch).

On the level of the Executive authority in its relationship with the Congress of the House of Representatives and the Senates, some aspects of cooperation are represented in the President's promulgation of laws after their approval by the Congress. (Thabet, 1999). In addition, the President's right to object over the laws approved by Congress in what is known as the "compromise objection" by returning these laws to Congress within ten days of its approval, accompanied by his observations. Therefore, the law is not considered effective in this case, unless approved by Congress by a two-thirds majority. Also, inviting the President to Congress to convene in exceptional circumstances. (Thabet).

As for Congress and its relationship with the Executive, some aspects of cooperation are represented by the Senate's approval to appoint senior officials in the country. (Zalmanovitch, 1986). In addition, the requirement for the Senate to approve by a two-thirds majority of the treaties concluded by the Executive and the appointment of ambassadors. (Croissant and Merkel, 2005).

Moreover, Congress has the right to accuse the President of state, his deputy, and Ministers for the crimes which they commit, such as major felonies and misdemeanours, and the Senate will assume this charge based on this accusation. (Shugart, 2005) The Senate appoints the Supreme Federal Court judges. (Mbaya1, Tella, and Audu Adole, 2013).

Therefore, the research shows that the establishment of the presidential system in the United States of America based on complete separation of authorities does not mean absolute of this separation or the absence of cooperation among these authorities.

2.1.2 The Parliamentary System

The parliamentary system is a representative system based on the principle of flexible separation of authorities in the state, in which each authority is independent of the other power in exercising its function, but with cooperation and balance between them, especially between the Legislative Council and the Council of Ministers which cooperates in performing some of its functions. Each authority has oversight tools in the face of the other, which achieves a balance between these two authorities in the parliamentary system. (Al-Jarf, 1992).

Therefore, the parliamentary system differs from the presidential system, as it is not based on the principle of complete separation of authorities, which raises the question about these characteristics of the parliamentary system and its applications. (Al-Jarf).

2.1.2.1 Characteristics of the Parliamentary System

Looking at the countries that have adopted the parliamentary system, it is clear that there is no parliamentary system its characteristics unite in all these countries, yet despite that, the majority of countries with a parliamentary system agreed on two main characteristics, namely the dualism of the Executive power, cooperation and balance between the Legislative Council and the Council of Ministers. (Al-Jarf).

a) Dualism of the Executive authority

The Executive authority in the parliamentary system consists of an irresponsible President of state, and the Council of Ministers responsible before the Legislative Council.

An Irresponsible President of State

The President of state in the parliamentary system, as a general rule, does not exercise executive functions in the area of governance and administration. (Badawi, 2010). The President of state does not also exercise Executive function on his own, but rather through the Prime Minister and the experienced Ministers. (Al-Dulaimi, 2001). In addition, the President of state all decisions and directives which are issued by him, require the signature of the experienced Ministers over his signature in what is called an additional signature. This is led to the responsibility of the Minister or the relevant Ministers for these decisions and directives without the responsibility for the President of state, whether he is King, Prince, or President, regardless of the method of his choice, whether it is by inheritance, appointment or election. (Albert, 2010).

As for criminal responsibility, it differs in countries with a royal parliamentary system from countries with a republican parliamentary system. In a royal parliamentary system, the king is not criminally responsible for his actions based on the prevailing principle that the King does not make mistakes. Opposite of that in a republican parliamentary system. (Albert).

Council of Ministers responsible before the Legislative Council

In the parliamentary system, the Council of Ministers is the actual power that is exercising the executive functions, governance, and administration affairs. In addition, the Council of Ministers in the parliamentary system is not headed by the President of state, who is not allowed to combine the two attributes. Otherwise, it will remove one of the most important pillars of the parliamentary system, in such a way that it is not possible to determine who is responsible for the actions of the Executive authority. (Cheibub, 2006). Therefore, the Council of Ministers is headed by the Prime Minister and he is often from the majority party, and his Ministers a homogeneous body that has the confidence of the parliamentary majority. (Cheibub).

The Prime Minister is also an experienced person in setting public policy and assuming the Council of Ministers' affairs in the executive field. This is led to its political responsibility before Legislative Council collectively or individually. (Asfour, 2002).

The collective responsibility means that the Prime Minister and his Council of Ministers are collectively responsible before the Legislative Council, for their general policy, then confidence is withdrawn from the Prime Minister and Council of Ministers if they breach their duties. (Al-Shukri, 2004).

As for the individual responsibility, it is decided towards one of the Ministers for his actions within the framework of his ministry, so he is solely responsible for these actions before Legislative Council, and confidence is withdrawn from him that results in submitting his resignation. (Linz, 2020).

In addition, the Legislative Council, in its oversight over the Council of Ministers and moving its responsibility for it, resorts to many tools, including questions, interrogation, parliamentary investigation, and the withdrawal of confidence. (Linz).

b) Cooperation and Balance between the Legislative Council and Council of Ministers

One of the main characteristics of the parliamentary system is achieving cooperation and balance among the Legislative Council and Council of Ministers.

Cooperation between the Legislative Council and Council of Ministers.

The most prominent manifestations of cooperation among the Legislative Council and the Council of Ministers in the parliamentary system are the principle of flexible separation among them. In which the Council of Ministers has the right to promulgate legislation approved by the Legislative Council and also the right of the Council of Ministers to submit draft legislation for approval by the Legislative Council. In addition, the participation of Ministers in parliamentary discussions, particularly discussion draft legislation, explaining the Council of Minister's policy and defending it. (Elgie, 2005).

In return, the Legislative Council has the responsibility for approving the general budget that is provided by the Council of Ministers. In addition, the Legislative Council creates permanent and specialized committees in the areas of executive work. The cooperation emerges also between the two authorities in the field of legislation, where the parliamentary system allows the Legislative Council to authorize the Council of Ministers to issue some legislation during the fixed term. (Elgie).

The Balance among the Legislative Council and Council of Ministers

The balance between the Legislative Council and the Council of Ministers in the parliamentary system is achieved by giving the Legislative Council oversight over the actions of the Council of Ministers. In addition, to move its political responsibility and withdrawing confidence from it, which results in the dismissal of the Council of Ministers and the formation of a new Council of Ministers that requires obtaining the confidence of the Legislative Council. (Elgie).

While the parliamentary system grants the Council of Ministers the right to postpone the sessions of the Legislative Council. It also gives the Council of Ministers the right to dissolve the Legislative Council as a tool in the hands of the Council of Ministers to settle the dispute with the Legislative Council, in which case must the call to elect a new Legislative Council and return to the people and know its position on that conflict. (Sadiq, 2013).

Therefore, if the result of the elections is in the interest of the previous parliamentary majority, then the practical result of this will be the fall of the Council of Ministers from which confidence will be withdrawn. But if that result comes with a new majority in support of the Council of Ministers, then in practice this will strengthen the position of the Council of Ministers and obtain more popular and parliamentary confidence. In addition, the parliamentary system has many tools that contribute to strengthening cooperation among the Legislative Council and the Council of Ministers and achieving a balance between them. (Sadiq).

2.1.2.2 Applications of the Parliamentary System

The emergence of the parliamentary system in Britain came as a result of a set of transformations and developments experienced by the political system in England, (Shugart, 2005): Which moved from the system of absolute ownership to the parliamentary monarchy, upon which the parliamentary system in England settled and was being applied by many countries in Europe and abroad. (Shugart).

The research shows that the success of any representative system is not related to its theoretical characteristics as far as it is related to its suitability to the nature of the political and party system and its compatibility with the political components of any political group.

2.1.3 The Mixed System

The mixed system is considered a representative system that combines in its characteristics between the presidential and the parliamentary system. The mixed system is based on the dualism of the Executive power, where executive functions in the area of governance and the conduct of state affairs are carried out by the President of state and the Council of Ministers that is responsible before the Legislative Council. The President of the state is chosen by election through the people, which gives him a strong position and wide powers in the political system. (Elgie, 2005): This point will explain the characteristics of this system and its applications.

2.1.3.1 Characteristics of the Mixed System

The mixed system combines the characteristics of the presidential and the parliamentary system. As follows.

a) The Mixed System has the Characteristics of the Presidential System

The mixed system is based on some of the characteristics of the presidential system. The President of state in the mixed system is chosen by direct universal suffrage through the people, which makes him, alongside the Legislative Council, a representative of the will of the nation, which leads to strengthening his position in the political system. This is evident through his lack of political responsibility before the Legislative Council. (Al-Shakrawi, 2020).

In addition, in this system President grants the broad powers, such as choosing and appointing the Prime Minister and appointing Ministers based on the proposal of the Prime Minister, who are collectively accountable to him. Any members of the Council of Ministers may not combine membership of the Ministry and Legislative Council. Moreover, the President holds the head of the Council of Ministers, and also the foreign policy, the appointment of ambassadors, and the conclusion of treaties. The assumption of security and military affairs in the country and the appointment of senior civil and military officials. (Al-Shakrawi).

The President has powers include the legislative and judicial field. In terms of the legislative field, the President of the state promulgates the legislation referred to him by the Legislative Council and has the right to reject them. In terms of the judicial field, the President of the state has the right to private pardon and to appoint judges. (Al-Sharqawi, 2007).

b) The Mixed System has the Characteristics of the Parliamentary System

The most prominent of these characteristics are in the dualism of the Executive authority, which consists of the President of state and the Council of Ministers. But with the difference of this dualism in the mixed system from the parliamentary system, both in terms of the tools for choosing the President of state or in terms of the powers granted to him. In addition, the Legislative Council assumes Legislative functions and cooperates with the Council of Ministers in exercising these functions, such as granting the Council of Ministers the right to initiate legislation by submitting draft legislation to the Legislative Council for discussion and approval or requesting its amendment. (Brown, 2000).

Moreover, the Legislative Council is assumed to grant confidence in the Council of Ministers and its program before commencing its functions or overseeing its actions through what the Legislative Council has from oversight methods toward the Council of Ministers which is accountable to it. The Legislative Council has also the right to withdraw confidence from it.

In exchange for giving the President of the state the right to dissolve the Legislative Council to achieve a balance between them, where the exercise of this right in the mixed system is vested in the President of state. (Duverger, 1980).

Therefore, it is clear that the mixed system is essentially based on many characteristics of the parliamentary system. But the choice of the President of the state is by direct universal suffrage through the people and granting him wide powers has added to this system a mixed nature, which combines the characteristics of the presidential system and the parliamentary system. (Duverger).

2.1.3.2 Applications of the Mixed System

The emergence of the mixed system was in France during the era of the Fifth Republic under the constitutional amendment, after that, it transferred to many countries, such as Austria, Portugal, Finland, Algeria, and other countries. But with its difference regarding the powers granted to the President of state and his position in the political system, which the researcher attributes to the conditions and factors of the formation of the mixed system in each country from the other. (Deferge, 1972).

The research about contemporary representative systems raises the question about the nature of the governing system in Palestine. It is clear through a review of the provisions of the Palestinian Basic Law of 2003. (Palestinian Basic Law of 2003. Article 2). The authors have found that the governing system in Palestine has certain characteristics in which presidential system is based, Article 5 of the Basic Law stated that "The governing system in Palestine shall be a democratic parliamentary system, based upon political and party pluralism. The President shall be directly elected by the people" (Palestinian Basic Law of 2003. Article 5).

In addition, Article 36 of the Basic Law specified that 'The term of the presidency shall be four years. The President shall have the right to nominate himself for a second term of presidency, provided that he shall not occupy the position of the presidency more than two consecutive terms.' (Palestinian Basic Law of 2003. Article 36)

As the President is the one who appoints the Prime Minister and assigns him to form the Council of Ministers and he may dismiss and accept his resignation, Article 45 of the Basic Law stipulated that “The President shall appoint the Prime Minister and authorize the latter to constitute his Council of Ministers. The President shall have the right to dismiss the Prime Minister or to accept his resignation and to request him to convene the Council of Ministers.” (Palestinian Basic Law of 2003. Article 45).

Article 46 of the Basic Law stated that “The Council of Ministers shall assist the President in the performance of the President’s duties and exercise of powers, in the manner stipulated in this Basic Law.” (Palestinian Basic Law of 2003. Article 46) It is also customary for the Prime Minister to present everything related to the Council of Ministers in terms of formation, dismissal, and resignation to the President of state. (Palestinian Basic Law of 2003. Article 45).

Moreover, the Basic Law of 2003 gives the President actual functions in the Executive, Legislative, and Judicial fields, without being responsible to the Legislative Council. (Badr, 2003).

As for the legislative field, Article 41 of the Basic Law stated that “The President shall promulgate the laws voted by the Legislative Council within thirty 30 days of their transmittal to him. The President may refer a law back to the Legislative Council with his observations and the reasons for his objection within the same period. Otherwise, the law will be deemed promulgated and will be published in the Official Gazette....” (Palestinian Basic Law of 2003. Article 41) Additionally, Article 43 of the Basic Law specified that “The President shall have the right, in cases of necessity that cannot be delayed, and when the Legislative Council is not in session, to issue decrees that have the power of law....”. (Palestinian Basic Law of 2003. Article 43) Article 110 of the Basic Law stated that “The President may declare a state of emergency by decree when there is a threat to national security caused by war, invasion, armed insurrection or in times of natural disaster, for a period not to exceed thirty (30) days....” (Palestinian Basic Law of 2003. Article 110).

As for the judicial field, Article 42 of the Basic Law specified that “The President has the right to grant special pardons or to commute sentences. However, general amnesties or amnesties for crimes may not be granted except by law.” (Palestinian Basic Law of 2003. Article 42) In addition, Article 107 of the Basic Law stated that “The Attorney General shall be appointed according to a decision issued by the President based upon a nomination submitted by the High Judicial Council....” (Palestinian Basic Law of 2003. Article 107).

However, the authors have found that the governing system in Palestine has also some of the characteristics of the parliamentary system, according to the Basic Law, the most prominent of the dualism of the Executive authority which consists of the President and the Council of Ministers, the latter must obtain the confidence of the Legislative Council before it begins its functions. (Palestinian Basic Law of 2003. Article 79-66).

In addition, the Basic Law is considered the Council of Ministers the highest executive and administrative body, where Article 63 of the Basic Law specified that “The Council of Ministers is the highest executive and administrative instrument; it shoulders the responsibility for implementing the program that has been approved by the Legislative Council. Except for the executive functions of the President, as specified in this Basic Law, executive and administrative powers shall be within the competence of the Council of Ministers.” (Palestinian Basic Law of 2003. Article 63).

Moreover, Article 70 of the Basic Law stated that “The Council of Ministers shall have the right to transmit draft laws to the Legislative Council, to issue regulations and to take necessary actions to implement laws.” (Palestinian Basic Law of 2003. Article 70).

Regarding the Legislative Council, it is the elected Legislative Council that undertakes the function of legislation and oversight over the actions of the Council of Ministers, through various tools such as questioning, interrogation, the formation of parliamentary investigation committees, and the withdrawal of confidence from the Council of Ministers or one of the Ministers. (Palestinian Basic Law of 2003. Article 56, 57 and 58).

In addition, Article 74 of the Basic Law specified that “...The Prime Minister and members of the Council of Ministers are collectively and individually accountable to the Legislative Council.” (Palestinian Basic Law of 2003. Article 74).

Moreover, Dr. Mohammed Shabir, (Shabir, 2020) Dr. Mohammed Abu Mater, (Mater, 2020) said that: “*The nature of the governing system in Palestine is a democratic system in which the president is elected from the people, and this is the essence of the democratic system, which is also based on respect for political and party*

pluralism, and therefore it is one of the indirect democratic systems as it did not take the tools of direct democracy. The governing system is considered a republic in which to elect the President by-election according to the Palestinian Basic Law of 2003. The President is not accountable to the Legislative Council, in exchange for the Council of Ministers are considered collectively and individually accountable before the Legislative Council, which makes the Palestinian Political System a mixed system that combines the presidential election to elect the President, and the responsibility of the Council of Ministers before the Legislative Council."

Furthermore, Mr. Moamen Al-Hattab, (Al-Hattab, 2020) and Mrs. Rula Moussa, (Moussa, 2020) stated that: *"The truth about the governing system in Palestine is a representative democracy depends on political and party pluralism as stated in the Palestinian Basic Law of 2003. The President is directly and generally elected by the Palestinian people. Under this system, the President has powers, and that places him in a position of strength compared to the Council of Ministers and the Legislative Council. In this system, The President is not responsible to the Legislative Council, in exchange for the Council of Ministers who are considered individually and collectively responsible before the Legislative Council."*

Therefore, the authors found that the governing system in Palestine, even if according to the provisions of the Basic Law, has many characteristics of a mixed system as it combines some of the characteristics of the presidential and the parliamentary system. But at the same time, it lacks an important characteristic of the mixed system which is the balance between the Legislative Council and Executive authority, where the previous Basic Law is considered the Council of Ministers responsible collectively and individually before the Legislative Council, which has the right to withdraw confidence from it. While it did not give the Executive authority, whether through the President of the Council of Ministers, the right to dissolve the Legislative Council, unlike some Arab countries such as Egypt.

3. CONCLUSION

The principle of separation of powers rests upon the recognition of the global fact that the concentration of absolute power in one man or one body inevitably leads to abuse and tyranny. Therefore, democratic states distribute the powers of the state to different organs namely the Executive, the Legislative, and the Judiciary.

In addition, the Palestinian Basic Law of 2003 stipulated in Article 5 that "The governing system in Palestine shall be a democratic parliamentary system, based upon political and party pluralism. The President of the National Authority shall be directly elected by the people. The government shall be accountable to the President and to the Palestinian Legislative Council."

It is evident that the Palestinian Constitutional Legislator has not adopted any of the governing systems that exist in the world, only stipulating that it is a representative democratic system, which made it a subject of the extrapolation in order to clarify the features and nature of this system in order to know the governing system in Palestine.

The authors and the respondents concluded that the governing system in Palestine is closer to a mixed system. However, it lacks an important feature of the mixed system, which is the balance between the Legislative Council and the Executive Authority. Accordingly, some provisions of the Palestinian Basic Law of 2003 need to be amended and reformulated so that the governing system in Palestine becomes a pure mixed system.

Finally, the authors would recommend, to amend Article 5 of the Palestinian Basic Law of 2003 to be clear about the nature of the governing system in Palestine. The authors would suggest becoming Article 5 as follow "The governing system in Palestine shall be a pure mixed system, based upon political and party pluralism. The President of the National Authority shall be directly elected by the people. The government shall be accountable to the President and to the Palestinian Legislative Council"

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5. APPENDIX

Interviews have been conducted with two Academicians, and NGOs to solve the problem of the research and achieve the aim of the research as well.

1. The Palestinian Basic Law of 2003 stipulates that the nature of the Governing system in Palestine is a representative democracy based on political and partisan pluralism. What does this mean and what is the reality of the Palestinian system?

2. Does this nature of the system affect the relationship between the President, the Council of Ministers, and the Legislative Council? If no, why? And if yes, how?

3. What is the concept of the Separation of Powers and the Rule of Law as stated in the Palestinian Basic Law of 2003?

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