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## IN THIS ISSUE



**Announcing the Results of the Judiciary Survey**

3



**Outcomes of the First Quarter of Judicial Training**

4



**Enactment of the General Amnesty Draft Law**

8



**Palestinian Women Judges: A Key to Justice**

9

## Qadaona Newsletter



### The Judicial Inspection Directorate Conducts 17 Inspection Visits, Targeting Regular Courts in the Northern Districts

The Judicial Inspection Directorate conducted 17 inspection visits, seven of which were during the first three months of this year. The visits targeted Appeals, First Instance and Conciliation Courts located in the northern districts. The directorate also received 27 complaints during the same period, nine of which were processed and led to a decision. Of all cases, 18 are still pending.

It's worth mentioning that directorate's staff participated in the 13th Annual Conference of the Heads of Judicial Inspection Directorates in the Sultanate of Oman.

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(Issue no. 2)

### The Supreme Judicial Council Publishes Its Fourth Annual Report

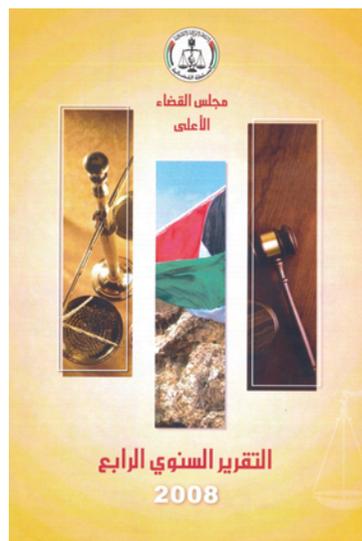
## The President of the High Court: The judiciary has made great progress in case processing and in institutionalizing development and reform, however, the sector still suffers from external interference and in compliance with its decisions

Ramallah – The Supreme Judicial Council issued its fourth Annual Report which illustrates the functions and activities of the Palestinian Judicial Authority in 2008. The report highlights the increase in the courts' disposition rate which was 66 percent higher than in 2007. The data collected shows that the public's trust in the judiciary has increased substantially in comparison with previous years. The increased trust has translated into more citizens referring their disputes to the courts, with the number of registered cases before the courts in 2008 47 % higher than in 2007.

The report began with a letter written by His Excellency Justice Issa Abu Sharar – President of the High Court and President of the Supreme Judicial Council - Palestinian National Authority President Mahmoud Abbas (Abu Mazen) – where the Chief Justice stated in the letter that: "The increasing trust puts on the Judiciary more responsibilities and duties, especially in facing the challenge of controlling case backlog in the various courts which is affected by many elements the most of which are outside the control of the judiciary such as the legislations governing the procedures applied before the courts, the need for judges and staff in addition to the performance of other justice sector partners such as the public prosecution, attorneys and the police. For example, the applicable procedures provide for very limited ways of serving judicial notes and do not consider notification through fax or telephone as legal notification. Since the courts produce hundreds of thousands of judicial notifications each year and the numbers of summoners entrusted to serve them is limited, these provisions greatly limit the courts' efficiency. In addition, the applicable laws require that some civil cases before the first instance courts are heard by panels of three judges, which also constrains the number of cases a single judge can hear and dispose of and causes cases to accumulate before the courts."

Justice Abu Sharar added in his letter: "Despite such problems and limitations, we at the judiciary did our utmost and used everything at our disposal in order to enhance the courts' efficiency. In order to do so we issued detailed directions aiming at solving the problems which prohibit judges from exerting their full control over the processing of cases."

The letter added: "We succeeded during the last year in launching important judicial institutions such as the Judicial Inspection Directorate, which conducts numerous periodical and unscheduled inspection visits to various courts and investigates complaints.



Other important and vital departments were also launched last year such as the Planning Unit and the Media and Public Relations Department. Other existing departments, such as the Technical Office, the General Secretariat and the Judicial Training Department, also received support targeted to enhance their functioning. Judicial competition exams were held to increase and expand the number of our judicial panel judges, with 47 new judges joining the judiciary last year – an increase of one-third to the total number of our judges. Despite this substantial boost in the number of judges, the judiciary still needs more judges to be able to deal with the increasing numbers of cases and the existing case backlog.

Surveys conducted by AWRAD Center at the end of 2008 showed many positive findings, with 86 percent of the population surveyed indicating that the Palestinian judges have the needed independence to perform their judicial duties and 77 percent saying that they trust the judiciary.

In his letter to the President, the Chief Justice also wrote: "All the facts stated above show that there is an important awakening taking place within the judiciary. We realize that such progress would not have been possible without the many efforts dedicated to this end, particularly the efforts of the judges and their administrative staff. The judiciary will strive for the same working spirit during 2009 to continue the institutionalization process of its functions and expand the number of its sitting judges

and administrative staff. We will provide them with the necessary training and guidance so that the litigation process is maintained under proper control and cases are decided according to the highest judicial standards.

The letter added "Despite the achievements mentioned above, the judiciary still suffers from improper interference in its functions and jurisdiction and lack of respect shown by some parties to its decisions and judgments. There are still some parties who refuse to abide by or enforce courts' decisions and judgments, especially the decisions of the High Court of Justice. Members of the security forces still refuse to testify before the court, which causes delay in the processing of many cases. The military courts are still infringing on the powers and jurisdiction of the regular courts in obvious violation of the Basic Law and the Regular Courts' Formation Law. Some parties still trying to force their guardianship on the Supreme Judicial Council and on the judiciary as a whole.

The judiciary has no means to deal with some of the real legal problems which affect the ability of the courts to manage their cases effectively and efficiently. The inability of the courts to effectively manage their caseload results in the accumulation of significant case backlog. To solve this problem, a number of legislative amendments are needed, the most important of which are the amendment of the Regular Courts' Formation Law, the Judiciary Law and the Criminal and Civil Procedures Laws. In addition, the applicable laws provide for an unrealistic quorum to convene the Supreme Judicial Council, requiring the attendance of seven members out of the eight who actually attend. Until now there has been little cooperation with the council to increase the number of its members and to provide a more realistic quorum for it to convene so it could be able to supervise the work and activities of the judiciary in an effective way.

The Chief Justice concluded his letter by saying: "The judiciary hopes that all these problems will be resolved and all partners in the justice sector will assume their roles and responsibilities, so that the judiciary is efficient and effective and able to meet Palestinian citizens' expectations. We would like to stress the importance of your support and the support of all the political and executive levels in the Palestinian National Authority in addition to the support of donor countries. Finally, to all those who have supported and are still supporting the Palestinian judiciary, we would like to express our deepest and greatest appreciation."

### Why We Need a General Amnesty Law

The members of the Judicial Legislations' Review Committee made a progressive decision when they recommended the enactment of the General Amnesty Draft Law submitted to the Palestinian Legislative Council by the Supreme Judicial Council. The draft law was approved by members of the committee after a careful review of its articles and provisions, ensuring that no dangerous criminals would escape justice and the proposed Amnesty Law will not affect the rights of other citizens.

The main goal behind the enactment of a General Amnesty Law in Palestine is to remove thousands of conciliation courts' cases which have been pending for many years. Such cases cannot be disposed of by the courts due to many factors, such as the absence of one of the parties in the case. Keeping such cases open wastes the judges' time and efforts and diverts them from hearing and judging other more important cases and disputes. Dismissing large numbers of old pending cases through the enactment of the General Amnesty Law in addition to giving more time to solve real disputes pending before the courts would resolve the problem of case backlog and make the courts more efficient and timely in serving justice without unreasonable delays.

The accumulation of pending cases before the courts, referred to as 'judicial backlog,' is largely the result of events surrounding the Israeli invasion of Palestinian cities in 2000 and the destruction of institutions that maintained the rule of law and administered justice, such as police centers, security headquarters and prisons. The Occupation also separated cities and communities from each other, making it difficult for judges to reach their courts. A culture of lawlessness and disrespect for the rule of law became prevalent. This is why it is important for society to show tolerance by forgoing its right to exact punishment for some minor crimes. Such a move would strengthen, not weaken, the society's security and protect the public order.

-cont. Page 2 -

## The Supreme Judicial Council Establishes a Legal Library at the Courts' Central Building in Al Bireh

On April 27, 2009, the Supreme Judicial Council inaugurated a legal library at the courts' central building at Al Bireh. The newly established library aims to provide judges, lawyers and students with the needed legal books and resources. The inauguration event was attended by judges, representatives of the European Union and the United States Agency for International Development (USAID).

Justice Issa Abu Sharar – President of the High Court and President of the Supreme Judicial Council – said: "This library has been established as a result of the direct cooperation between the EU Judicial Strengthening Project Seyada and USAID Rule of Law

Project (Netham), with books and references provided by Seyada, while Netham worked on the library design and provided it with the furniture and equipment.

Judge Cornelis Blok, Seyada Program Coordinator, said that: "There are three important resources that should be provided to each judge: the applicable laws, the judicial precedents (Casation Court's judgments) and jurisprudence, and libraries are established to provide these important resources." He also presented Justice Abu Sharar with a book that bears his signature and expressed his hope that the upcoming Seyada 2 project will continue its support to the judiciary and to the new library.

USAID representative Ms. Jill Gulliksen expressed her hopes that this library, which was established through the cooperation of both the EU and USAID projects, will constitute the first step of further cooperation to support the judiciary. She also thanked the President of the Supreme Judicial Council for his good administration and leadership of the judiciary.

The library occupies a hall of 80 square meters and is equipped with an electronic system and 673 legal books and references. Justice Abu Sharar also noted that several judges had donated a number of valuable judicial references to the library.



## Under the Patronage of His Excellency Justice Issa Abu Sharar: Amin Media Network Launches Project to Promote Coverage of Judicial and Courts' Affairs

Amin Media Network launched a new program titled "The Palestinian Judiciary in the Local Media: Towards the Establishment of Specialized Judicial and Courts Media Coverage".

The program was launched under the patronage of Chief Justice Issa Abu Sharar (President of the High Court and President of the Supreme Judicial Council). The launch event, held on May 6, 2009 at the Best Eastern Hotel in Ramallah, was attended by local media representatives and various organizations interested in strengthening the links between the local media and the judiciary.

The program is being launched in a context of greater transparency and in light of the recent decision taken by Justice



Abu Sharar, which allowed journalists to attend and report on court trials and hearings. The four-month pilot program will offer, among other initiatives, specialized training activities to journalists from various media organizations

Justice Abu Sharar stressed

that this program will support the efforts of the Supreme Judicial Council to educate citizens about the courts' and the judiciary's achievements. The program also aims to strengthen citizens' trust in the Palestinian Judiciary and to help journalists fully understand and report on the courts and judicial issues.

Mr. Khaled Abu Aker, the director of Amin Media Network, said that the aim of this initiative is to help nurture a pool of specialized journalists able to cover the courts' affairs. He noted that the relations between journalists and the Supreme Judicial Council have improved and the closer connection has led to the establishment of the Media Department at the Supreme Judicial Council, which makes it easy to access information related to the courts. Mr. Abu Aker added that the open relations with the judiciary would enable journalists and the media to write about various issues and subjects, including those they had assumed were forbidden to broach in the media. Through this initiative, more information would become available to journalists and coverage of courts-related issues would be facilitated and broadened.

This program is one of the initiatives sponsored by Netham, USAID's Rule of Law Project, which aims to increase the public's trust in the judiciary and institutionalize its work and functions.

### Supreme Judicial Council Issues Instructions to all Chief Judges to Facilitate Media Coverage of Court Hearings

On April 7, 2009, His Excellency Justice Issa Abu Sharar (President of the High Court and President of the Supreme Judicial Council) issued an internal memorandum directed to all regular courts' chief judges, allowing journalists to cover court news and publish them in various media outlets.

The memo indicated that certain legal rules must be followed when covering court hearings in order to guarantee the legality of such hearings. These rules are as follows:

1. A journalist can attend a court hearing as any other citizen unless the court decides to hold the trial on camera in order to protect public order or family privacy or morals according to the Civil Procedures Law.
2. If the journalist wishes to use any electronic device to cover the hearing, such as video or audio recording equipment, he/she has to get prior approval of the court's chief judge.
3. Media coverage is not allowed in hearings related to juveniles (those younger than 18.)
4. The publication of photos of a detained person who is still on trial is prohibited and, in case such photos were taken by journalists during hearings, the presiding judge shall inform the journalists not to publish them.
5. Journalists are prohibited from commenting on court judgments and decisions or publishing hearing minutes. Courts shall not provide journalists with courts' documents or hearing minutes.
6. Judges are prohibited from issuing any press releases or from commenting on the judgments they issue.

### Judges' News

#### A goodbye party for judge, Na'em Al Agha

Southern district judges held a goodbye party for their colleague judge, Na'em Al Agha, Gaza Court of Appeals judge, who retired in May 2009 upon reaching official retirement age.

Judge Ishaq Muhana welcomed the participants and the now-retired judge in his opening speech. Justice Saada Al Dajani, The High Court Deputy Chief Judge, commended the judge's good performance and high ethical standards and wished him a wonderful and quiet, as well as happy, life.

#### In Memory of Judge Fayez Al Qedrah

On Sunday, January 25, 2009, Justice Fayez Al Qedrah passed away and left this life to the mercy of Allah.

Judge Al Qedrah lived a life of giving and hard work. He was born in Jaffa on January 5, 1935, and completed a law degree at Cairo University in 1956. He worked as a representative of the Attorney General in 1957 and as a conciliation court judge in 1964. He also served as a reserve officer in the Palestinian Liberation Army in addition to working as a central court judge in 1967. Judge Al Qedrah also served as a judge in the High Court and as a seconded chief judge at the central court and chief judge of the grand felonies court in 1994. He served as a member at the Supreme Judicial Council in 2000 and as a deputy to the Chief Justice in 2004. He retired in 2005 when he reached the official retirement age. He also acted as a member of the Board of Trustees of the Al Azhar University.

#### In Memory of Judge Wahid Al Amleh

On January 30, 2009, Judge Wahid Abdul Aziz Al Amleh, Chief Judge of Hebron First Instance Court, passed away at the age of 62. Judge Al Amleh spent most of his adult life defending the law and protecting constitutional freedoms.

Judge Al Amleh graduated from Ein Shams University in Egypt in 1970 and, from graduation until 1986, worked as a trial lawyer. In 2001, he was seconded to serve as a judge at Hebron First Instance Court and in 2006 he was appointed as Bethlehem First Instance Court Chief Judge and was later seconded to serve as Hebron First Instance Court Chief Judge.

### Why We Need a General Amnesty Law

-Continued from page 1-

This is because only minor cases would be dismissed if a General Amnesty Law is enacted, the dismissal of which would not pose a threat to the public's safety. Examples of such cases are: slander and defamation cases, driving in the wrong direction, operating a vehicle without a license, grazing cattle on someone else's land, light theft cases, violating the sacristy of the month of Ramadan and other similar minor offences. Thousands of such cases have been pending before the courts for years.

On the other hand, the Draft Amnesty Law excludes many serious crimes such as espionage and treason, murder, rape, kidnapping, embezzlement, bribery, abuse of public office, crimes against public health, drug trafficking, forgery, robbery, and blackmail.

The timely enactment of the General Amnesty Law would help to quickly decrease the case backlog, and would support the reforms already taken by the Palestinian judiciary. (To help reduce case backlog, the Regular Courts' Formation Law should also be amended to replace the three-judge panel system with a one-judge system.) Though this is the first proposal for a General Amnesty Law to be enacted by the Palestinian Legislative Council, such a practice is very common in other countries. Some human rights groups see the enactment of a general amnesty law as an integral part of transitional justice which shortens the transition path taken by oppressed societies as they become societies governed by law.

The Editorial Team

## Announcing The Results of the Perceptions of the Palestinian Authority Judiciary Survey

*The Results: 77 percent of the Palestinian public trusts the judiciary and 66 percent trust lawyers. Al Husaini: President Mahmoud Abbas supports the judiciary and the law without any limits. Abu Sharar: The survey studies were conducted with absolute independence and without any interference from the Supreme Judicial Council. Isifan: The judiciary is now perceived as an institution led by an administration not by individuals, in contrast with past perceptions.*

Dr. Rafiq Al Husaini, the Head of the Palestinian Presidency's Office, stressed that President Mahmoud Abbas, the President of the Palestinian National Authority, supports the judiciary and the rule of law without any limitations. Dr. Al Husaini spoke during an event organized by the Supreme Judicial Council on April 16 2009 in Al Bireh, to announce the results of recent survey project. The surveys assessed the current status of the judiciary and were carried out by The Arab World Center for Research and Development (AWRAD) and the USAID-funded Netham project. The event was attended by various official, civil society and media institutions.

Dr. Al Husaini added: "We do support the establishment of a fair and just country, where we can be proud that everyone is treated with fairness." He also said, "We in Palestine decided to have three branches of government which should function as one hand and at the same time preserve their independence from one another, in order to have an effective system of accountability." He noted that: "The realization of the rule of law cannot only be done by supporting and developing the judiciary alone, it should be done by supporting and enhancing the functions of the entire justice sector which includes, in addition to the judiciary, the public prosecution, the Ministry of Justice and the police."

In his speech Chief Justice Issa Abu Sharar - the president of both the High Court and of the Supreme Judicial Council - noted: "The surveys were conducted with absolute independence and without any interference from the Supreme Judicial Council whether during the preparation or the implementation phase." He also added that: "Knowing the views of the public and the related groups helps to improve the current situation, even if such views were different than what was expected." He stressed that: "These surveys are the first of their kind in examining the performance of the judiciary and its strategies and, to that end; the studies included all sitting judges and administrative staff."

Chief Justice Abu Sharar called upon all parties concerned with the development of the judiciary, such as lawyers, civil society institutions, members of the Legislative Council and donor agencies to assist in implementing the recommendations made by the authors of the survey, and to suggest work policies that the Supreme Judicial Council can implement.

Mr. Abu Sharar hopes that the Presidency of the Palestinian National Authority will continue its support of the judiciary by enacting a set of legislations related to the work of the judiciary, such as the general amnesty draft law and the regular courts formation draft law. These two draft laws have been widely discussed and gained the support of the Judicial Legislations Studies Committee at the Legislative Council, which is currently studying more judiciary-related draft laws.

Chief Justice Abu Sharar added that: "The enactment of such legislation and the amendments will help in solving the backlog of cases before the courts and will enhance the performance of the courts without jeopardizing the fair trial guarantees and without enabling the evasion of justice for crimes that have been committed. This can be done without an extra financial burden on the Palestinian treasury."

Nabil Isifan, Chief of Party of the Netham Project, said that: "The development of the judiciary requires that we look for new working mechanisms to regulate the relations between the justice sector players, mechanisms that are more efficient than the ones in place now." He also expressed the willingness of the Netham

Project to host a meeting that would include all the justice sector institutions under the patronage of the Presidency represented by Dr. Rafiq Al Husaini and the participation of Justice Abu Sharar and representatives of other justice sector institutions, in addition to independent experts, to come up with effective new working mechanisms to help build an independent and efficient judiciary.

Mr. Isifan added: "We at Netham, and as a result of our daily work with the judiciary, are confident that this institution is led by an administration and not by individuals, which contradicts the past perceptions. In order to build its institutional capacity, the judiciary established in 2008 and 2009 many administrative units and departments related to the Supreme Judicial Council, and enhanced the functions and efficacies of the existing units and departments. Right now, the judiciary has many specialized departments such as the Planning Department, the Courts' Administration Department, the Judicial Inspection Directorate, the Media and Public Relations Department and the IT Department, in addition to the Supreme Judicial Council's General Secretariat."

The surveys unveiled during this launch event aimed to provide clear and scientific information on the perceptions of all the targeted groups regarding the judiciary and its various components. It also aimed to spot difficulties and challenges that face the judiciary, to help it trouble-shoot the problems and achieve its objectives. To do so, 1,010 individuals in the West Bank participated in the studies in addition to 345 lawyers, 107 judges, 124 courts' staff and 358 litigants and court users. The studies were conducted in November 2008.

### The Following is a Summary of the Studies' Major Findings:

1. Overall, judges were seen as the most trusted group by those surveyed and the second most trusted group was the courts' staff. There was more variance in the choice of 'least trusted' group. According to the national sample, the courts' staff and the courts' users' samples, least trusted were lawyers and police procedures. According to the judges, least trusted were lawyers and public prosecution procedures.

2. The public tended to express positive perceptions of the courts' judgments; with 66 percent saying that the courts' judgments were just and fair to a great extent and medium extent. This percentage decreases among court users, reaching 59 percent.

3. Judges were divided in their views of the performance of the Supreme Judicial Council. Two thirds of the surveyed judges (65 percent) expressed their satisfaction with the council's performance; while one third said they were not satisfied with its performance. Over three quarters (81 percent) of judges stated that the council responds to the courts' needs to a great extent or average extent while 16 percent expressed a negative opinion of the council's responsiveness to the courts' needs.

4. Of the judges, 11 percent indicated that they were pressured by lawyers and 10 percent said that they were personally pressured by the council's members. The court's staff did not indicate that they were personally under any substantial pressure, despite the fact that 5 percent of them agreed that various sources of pressure were often exerted.

5. Most of the surveyed individuals placed both France and Britain in first place on a scale of fairness and integrity of national judicial systems. The United States placed third.

6. Almost half (45 percent) of lawyers think that the government does not work in any way



to preserve the independence of the judiciary or it does so in a very limited way. Some two thirds (65 percent) of lawyers think that they are pressured by the security apparatuses to a large or average extent.

7. The results showed that 71 percent of judges trust lawyers to a large or average extent (3 percent to a large extent and 68 percent to an average extent). Almost a third (29 percent) of judges do not trust lawyers at all, or only to a minimal extent.

8. The judicial inspection department was formed by the Supreme Judicial Council less than year ago. Despite this short time of operation, 23 percent of the lawyers surveyed think that the inspection standards are sufficient to verify the work of judges, while 69 percent think such standards are not sufficient. Almost half (45 percent) of lawyers think that the current inspection system affects the independence of the judiciary.

9. Most of the litigants (69 percent) believe that judges are the major reason behind trial delays, while 39 percent think delays are caused by an absence of witnesses, and 36 percent attribute delays to the inefficiency of the notification procedures. Of the litigants, 44 percent said that their knowledge of court procedures was limited. The majority (52 percent) said that they were given the opportunity to defend themselves according to the law, and 40 percent said that they had not.

10. Most lawyers (56 percent) said that the judges treated them with average respect, and 29 percent said judges treated them with great respect. Some 11 percent of the lawyers felt that the judges treated them with minimal respect. Most lawyers agreed that nepotism influenced court procedures, with 33 percent saying that judges showed nepotism to a large extent, while 40 percent said nepotism exists to an average extent, and 14 percent said nepotism was minimal. Only 12 percent of lawyers felt that judges do not practice any nepotism.

11. More than 73 percent of the courts' staff said that nepotism influenced hiring and appointment practices and 58 percent said that nepotism affected the promotions of courts' staff. Asked if judges treated them with respect, 58 percent of staff answered they did. Most of the staff (73 percent) felt that the judges showed preferential treatment towards certain staff members (17 percent to a large extent, 44 percent to an average extent, 12 percent to a minimal extent).

### Major Recommendations Made by the Studies:

1. To improve the public's perception towards the fairness, impartiality, and neutrality of the judiciary, more information should be provided to the public about the functioning of the Judicial Authority. Information should be made accessible online and/or in print and should center

on the importance of confidence in the judiciary and formal and informal institutions engaged in promoting rule of law, particularly educational institutions.

2. The Judicial Authority should respond to case backlog and take rapid action in long-pending cases. In parallel, courts services should be improved, bureaucratic measures decreased, court users' transactions facilitated and feedback on transactions provided. Measures should also be taken to improve the efficiency of court employees and ensure that court users feel they have been treated with respect. All these measures may improve the public's image regarding the Judicial Authority and its fairness.

3. The courts' credibility stems not only from its own work, but also from the work of the police and public prosecution. The inter-relationships between these bodies must remain on the radar for further enhancement and development. The judicial system should continually be improved, in line with developing the police and public prosecution.

4. There is an urgent need to formulate mechanisms to improve attitudes of judges towards lawyers, as lack of confidence from both sides is clear. Suggested methods focus on the nature and boundaries of professional relationships between judges and lawyers; ensuring continuous and structured dialogue between the two parties through workshops and meetings, and further study of the relationship between the two groups and reasons for the mutual lack of confidence.

5. There is a need to develop a strategy to improve the attitudes of judges and lawyers regarding the inspection process. As part of this strategy, discussions would be continued on the prevailing inspection procedures and standards to help judges identify possible improvements. This would include an increase of cases inspected to more than the existing 5 percent. This may be implemented alongside suggestions made by judges during this survey, such as: providing better training for inspectors, conducting unannounced inspection visits, and adopting a more structured and professional inspection approach. In addition, meetings and workshops should be held to verify that all judges are familiar with the procedures of inspection. Recent, more interactive techniques should be used in discussions and presentations.

6. A comprehensive study and an administrative evaluation of staff workload should be carried out in order to evaluate the suitability of job descriptions for these staff. It is also necessary to identify the problems and challenges facing each employee and to re-evaluate the salary scale.

7. In all judicial functions and posts, efforts should be made to achieve better representation among genders and among geographical areas.

## 'Vibrant and Dynamic': Judicial Training during the First Quarter of 2009



By Judge Raed Abdul Hameed  
Coordinator of the Judicial  
Training Department

The Judicial Department was established in 2006 and is managed by a group of judges who represent the High Court, courts of appeals and the first instance courts. Its main duty is to develop strategies that govern the training of judges and the courts' administrative staff such as clerks and summoners.

The Palestinian judiciary adopts a vibrant and dynamic approach in the training of judges and staff. This philosophy stems from the fact that the judiciary considers itself a vibrant institution living in a state of constant change and development, which means that judges must always be supplied with new information and skills to keep up with social and economical developments. Specifically, judges have to be regularly informed of the latest legal amendments and changes in addition to recent developments in global communication trends and technologies.

Continuing judicial training, then, is based on the development of training programs which keep the judges aware of the latest legal developments and trends, especially new areas of law and judicial practices. One of the most important aspects of continuing judicial education is a focus on practical training and the application of laws or legal provisions. As part of such practical training, a judicial trainer adopts an interactive teaching style and avoids the traditional method of lecturing about theoretical issues.

In addition to the continuing training programs, there are many specialized workshops which tend to target a certain group of judges such as conciliation court judges, judgments' enforcement judges and judges specialized in handling urgent matters. There are also training programs targeting newly appointed judges who are usually assigned to a conciliation court.

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The Judicial Training Department designs special training programs for such judges, according to the experience and feedback the department has gained from past training programs.

The Judicial Training Department divides its training work plan into programs, courses and workshops according to subjects and target groups, in addition to the technical and scientific experience needed to lead each training. On February 14, 2009, the Supreme Judicial Council launched the continuing training program for the regular court judges in an event that took place at the Red Crescent Hotel in Al Bireh. The program was launched with the support of Karamah initiative funded by the Canadian International Development Agency. After the program's launch, four training events were held. The first dealt with judicial inspection and targeted conciliation courts, courts of appeals and first instance courts judges. The second training, titled "Referrals According to the Procedures Law", targeted conciliation and first instance courts judges and was held on March 28. The third training, held on April 4, dealt with the "Early Control in the Litigation Process" and trained both conciliation and first instance courts judges. The fourth training was held on April 24 on "Practical Issues Related to Evidence," which targeted both conciliation and first instance courts judges and was delivered by a group of judges trained as instructors.

Conciliation and first instance court judges also benefited from training. On March 6, the Supreme Judicial Council's Training Department, in cooperation with the USAID-funded Netham Project, began a training program for conciliation and first instance courts judges from the southern districts of the West Bank. The training centered on "Procedures Followed in Processing Criminal Cases" and was delivered by two Jordanian experts: Judge Abdul Rahma

Tawfiq and Judge Ali Abu Hujaleh. The second part of this training started on April 3, and targeted a new group of conciliation and first instance courts judges.

The Judicial Training Department also oversees the Preparatory Training Program for newly-appointed conciliation courts' judges. On April 18, fourteen conciliation courts' judges finished their preparatory training program for 2008/2009. This training included 276 actual training hours at both the Palestinian and Jordanian Judicial Institutes. The training program included many of the continuing training programs topics in addition to other workshops such as the workshop that was held on April 1 concerning the "Drafting of Civil and Criminal Judgments".

Shortly after the conclusion of these training initiatives, H.E. Judge Issa Abu Sharar opened the Preparatory Training Program for the second group of newly appointed conciliation court judges on April 13 at the Palestinian Judicial Institute. This group was composed of 11 judges and was appointed by a Presidential Decree issued on March 26, 2009.

At the same time that the Preparatory Training Program was concluded, another 13 sitting judges completed their Training of Trainers Program so they could serve as judicial trainers in future training programs. The training was conducted by European expert judges.

In addition, further specialized courses were held. The Judicial Training Department, in cooperation with Seyada project, conducted two specialized trainings this year. The first was held on April 11 and centered on "Urgent Matters Cases" for judges who specialize in trying such cases and the second was held on April 18 for judgment enforcement judges and officers and focused on "Judgment Enforcement Law".

The training programs held during the first quarter of 2009 did not target judges

alone, but included the courts' administrative staff such as courts' chief clerks, clerks, summoners, notary public officers and judgment enforcement officers. To begin the initiative of upgrading the staff's skills, the Judicial Training Department, in cooperation with the Netham project, executed a staff efficiency upgrading plan which targets courts' staff and includes various comprehensive training courses to be conducted throughout the year.

The first staff training program was held on March 7 at the Palestinian Judicial Institute, and targeted the chief clerks of the Palestinian courts. The training instructed the clerks on the use of the case management automated system, Al Mizan. The training included instructions on producing statistical reports, the use of the automated notification system, and trouble-shooting the most common problems in data entry. The same training program was repeated for another group of courts' staff on March 28. The training was held in Hebron and Nablus courts as well as the Palestinian Judicial Institute.

In addition to the technical training programs designed for courts' staff, other training programs were held in cooperation with the Netham project which provided training such as "communication skills and customer service" instruction, which was held on April 21 and 25 at the Palestinian Judicial Institute.

Finally, a number of courts' staff attended two training programs during the month of April. The training was conducted through the cooperation between the Seyada project and the Information Technology Department at the Supreme Judicial Council. The first program aimed to enhance the court reporters' typing skills and the second one, an ICDL training program for court clerks, dealt with Al Mizan, the automated case management program.



# Legal Principles derived from Cassation Court Judgments



## Direction of: Judge Emad Saleem - High Court Judge

The Cassation Court is considered the Supreme Court in the Palestinian judicial system. It is the topmost institution in the Palestinian court structure, and serves as the principal guarantor of the litigants' rights. All Courts of Appeals final judgments, whether civil or criminal, can be appealed to the Cassation Court as long as the appeal alleges that the Court of Appeals erred in applying or interpreting the law or violated its provisions, or if the judgment issued by the court is null and void, or if the procedures followed by the court were null and void and affected the outcome of the case (the judgment).

The Cassation Court also has the authority to review the judgments of the Courts of Appeals if the judgment contradicts another final judgment which was issued in relation to the same dispute and the same parties. The Cassation Court, by reviewing the judgments, affirms judgments which conform with the law and nullifies those that contradict and violate the law. Besides reviewing courts of appeals' judgments, the Cassation Court has the power to decide which court has jurisdiction to try a certain case when there is a dispute between courts on the issue. It also has the jurisdiction to try personal status disputes related to non-Muslims. Finally the court has the power to review and decide on any request submitted before it in accordance with any applicable law.

### Legal Principles

1. The insurance contract which was created (finalized) under the old law shall be governed (in relation to its requirements and the legal standing of each party) by the law under which it was created (that is, the old law), while the effects of such contract (the rights of the person injured in a traffic accident) shall be governed by the provisions of the new law (the law that was applicable when the traffic accident took place) that is the Insurance Law number 20 of 2005

2. The interpretation of the contract and looking into the contracting parties real shall be done in light of the law that was applicable when the contract was created between the parties.

The Palestinian National Authority  
Judicial Authority  
Cassation Court  
The Judgment

Issued by the Cassation Court convened in Ramallah and authorized to hold the trial and issue the judgment in the name of the Arab Palestinian People.

#### Presiding Panel

Panel Chair: Justice Sami Sarsour.

Members of the panel: Justice Mohammad Shehadeh Sader, Dr Othman Takruri, Fared Muslih and Mohammad Samih Al Dwaik.

The Appeller (objector): The Palestinian Fund for the Compensation of Traffic Accident Victims - Ramallah.

Represented by: Attorneys Mohammad Tahbob, Mohammad Tharf and Hassan Suliman - Ramallah.

#### The Party Appealed Against:

1. Mohammad Khalil Ali Tarayrah. Represented by Attorney Mazin Awad - Hebron.

2. Palestine Insurance Company- Ramallah. Presented by Attorney Nabil Moshahour - Ramallah.

Represented by: Attorneys Shukri Al Nashashibi and Mahmoud Khalil - Ramallah.

### Procedures Followed

The appellant (objector) representative submitted this appeal (objection) on July 27, 2008 requesting the Cassation Court to annul Jerusalem Court of Appeals judgment issued on June 23, 2008 in the civil appeal number 183/2008. The court of appeals judgment annulled the appealed decision of the lower court and accepts the appellant (Palestine Insurance Company) request # 78/2008 and it also dismisses the case filed by the plaintiff (the first party the appeal was submitted against) and makes them bear all costs and fees in addition to 50 JD as attorneys' fees. The court of appeals judgment also rejected the request # 74/2008 submitted by the appellant (the Palestinian Fund), the second party

against whom the appeal is submitted and the return of all documents to the trial court in order to try the lawsuit according to the view of the courts of appeal, all fees, costs and attorneys' fees have to be paid by the losing party.

The appeal (objection) before the Cassation Court is based on the following:

1. The court of appeals erred in applying the law because it deprived the litigants of one level of litigation. The appealed decision did not deal with the legal point related to the absence of a condition in the insurance policy that limits the number of passengers and also it did not deal with the applicability of article 141/c of the Insurance Law number 20 of 2005. Thus the court of appeals, after it identified the applicable law which is different than the one applied by the trial court, should have referred the lawsuit back to the trial court with its remarks in order for the latter to proceed in trying the lawsuit.

2. The court of appeals erred and contradicted the law when it stated that the insurance policy (exhibit T/1) implicitly defines in its written terms to the number of passengers allowed as seven persons in addition to the driver because the policy does not include any such condition related to the number of passengers, which is very natural due to the fact that the law under which the policy was drafted prohibits the inclusion of such conditions. In addition any conditions which exempt the insurance company from its responsibilities shall be included clearly in the policy or it would be considered as null and void according to article 12 of the Insurance Law number 20 of 2005.

3. The court of appeals erred in its interpretation of the provisions of the Insurance Law number 20 of 2005. The interpretation of the insurance contract stated in article 1 of the law means that the contract shall be governed by the law under which it was finalized despite the nullification of all orders and decisions which are related to the insurance policy and were issued by the occupation authorities. Such nullification should not affect (nullify) the insurance policies issued by the insurance companies when such orders and decisions were in force. Such argument is supported by articles 18 and 19 of the Insurance Law. The insurance policy which constitutes the subject matter of this lawsuit is not in contradiction of the Palestinian Insurance Law provisions which means it should be held enforceable. As for articles 21 and 22 of the Insurance Law, which were forcibly applied in this lawsuit by the court of appeals, they do not deal with bodily harm which is dealt with by article 159 of the same law. The interpretation of article 141/3 of the Insurance Law should mean that it gives the insurance company a license that it could use and should not be interpreted as interference by the legislator in order to deny insurance coverage when such a license is not used. It is obvious from the evidence that the license given by article 141 was not used by the insurance company and article 141 is not a part of the public order and does not constitute an obligatory rule which could not be contradicted. Interpreting such a rule in light of the labor law is not a valid interpretation and, in fact, violates the law. The text of article 141 cannot be hastily applied without amending the provisions of the insurance policy to be in conformity with such a rule and to clarify the conditions under which the coverage could be denied. Such actions should have been taken before the accident but this did not happen.

The appellant (objector) attorney requests the nullification of the court of appeals judgment and he also requests the Cassation Court to try the subject matter or to nullify the judgment and return the lawsuit to the court of appeals in order to retry

the lawsuit by sending the lawsuit back to the trial court, in addition to ordering the party against which the appeal (objection) is submitted to pay all fees, costs and attorney's fees.

The first party against whom the appeal (objection) is submitted (Mohammad Khalil Ali Tarayrah) did not submit his list of responses. The second party against whom the appeal (objection) is submitted (Palestine Insurance Company), submitted its list of responses, which included the following:

1. The appealed (objected against) decision issued by the court of appeals confirms with the applicable laws and rules in addition to the general principles of justice.

2. The allegations contained in the first paragraph of the appeal list do not confirm with reality, because the first instance court (the trial court) in its appealed decisions discussed and dealt with the legal value of the insurance policy (exhibit T/1) in addition to the fact that the court of appeals also dealt with such issues according to the legal powers it has stemming from article 223 of the Civil and Commercial Procedures Law.

3. Contrary to the allegations of the appellant (objector) - Palestinian Fund for the Compensation of Traffic Accidents' Victims - the related insurance policy issued by the second "appealed against" party clearly defines the number of passengers allowed to be on board of the public transportation which caused the accident. The number of passengers must not exceed 7+1 which is also written in bold letters at the exterior of the car. The court of appeals illustrated this matter very clearly in its decision. The text of article 12/2 of military order 766 is clear in stating that the responsibility of the insurance company shall stop if the driver is held in violation of the applicable laws and orders. In such a case, the responsibility of the Fund shall come into effect. It is clear that the driver should not transport a number of passengers which exceeds the number allowed by the insurance policy and the car's registration license, which is clearly applicable to the facts of this dispute. What is stated in the second paragraph of the list of appeals is not true and shall be rejected by the courts on both legal and factual grounds.

4. The third paragraph of the list of appeals is in absolute contradiction with the related legal rules. The court of appeals had correctly dealt with the rule contained in article 141 of the Insurance Law Number 20 of 2005 and its interpretations of the rule conforms with the rules of the Palestinian Traffic Law and also with military orders number 1310 and number 677 and their amendments.

The party against whom the appeal is submitted requested the Cassation Court to reject the appeal and hold the appellant (objector) responsible for paying all fees, costs and attorney's fees.

### The Trial

The facts and procedures of the lawsuit shows that the first appealed-against party (Mohammad Tarayrah) filed a lawsuit before Hebron First Instance Court against the appellant (objector), the Palestinian Fund for the Compensation of Traffic Accident Victims and also against Palestine Insurance Company, asking the court that he should be compensated because of the bodily harm he suffered as a result of a car accident. The lawsuit was filed under number 13/2007.

The appellant (objector) - Palestinian Fund for the Compensation of Traffic Accident Victims - submitted a request to the court asking it to reject the lawsuit because the Fund is not responsible for compensation according to the terms of the insurance policy issued by Palestine Insurance Company and because there is no dispute between the Fund and the plaintiff. The request was registered before the court under number 74/2007.

The second party against whom this appeal is submitted (Palestine Insurance Company) submitted a request before the court asking it to reject the lawsuit because the driver who caused the accident was in violation of the insurance policy and thus there is no legal dispute between the company and the plaintiff. The request was registered before the trial court (Hebron F I Court) under number 78/2007. The company also submitted another request related to request number 74/2007 which was given number 100/2007 asking the court to be considered as a defendant in relation to request number 74/2008 according to the rule stated in article 96 of the Civil and Commercial Procedures Law. Because rejecting the lawsuit according to the Fund request would affect the legal standing of Palestine Insurance Company, the court decided to allow the company to enter the case as a second defendant in relation to request 74/2007.

Based on the unity of subjects and parties in both requests and because the decision regarding any of them would be applicable to both, the court decided to join and unify both requests under number 78/2007 in order to issue one decision.

As a result of reviewing the outcome of lawsuit number 13/2007, which was tried by Hebron F I Court, and the

two requests' lists and arguments submitted in the unified request, the court found that the undisputed facts between the parties can be summarized as follows:

1. The car which carries plate number 9074830 and was driven by the deceased (Khaled Ali Salem Zydat) was the cause of a car accident on July 27 2006 which resulted in the injury of one of the car's passengers (Mohammad Tarayrah), the plaintiff in the lawsuit before the trial court and the first party against whom this appeal (objection) is submitted before the Cassation Court.

2. The car was insured by an insurance policy issued by Palestine Insurance Company on February 15, 2006, which was valid until February 14, 2007. The accident took place while the insurance policy was still effective.

3. When the accident took place the car was carrying, in addition to the deceased driver, nine passengers.

After the research this court undertook in order to define the applicable law in this lawsuit, it found that in contracts at will, the effects of such contracts and its termination shall be governed by the law according to which such contracts were created, which constitute an exception to the immediate effect of the newly enacted laws. The legal positions are created by a contract which only concerns its parties and was created according to their free wills. Such a contract is exempted from the immediate effect of newly enacted laws, thus the provisions of the old law keep governing the contract even if the new law provides for other rules. The fact that the first party against whom this appeal is submitted bases his claim on the insurance contract between the insurer and the insured which was created and came to life under the provisions of the old law governing road accidents and according to which he deserves to be compensated, leads us (the Cassation Court) to conclude that the applicable law in this lawsuit is the provision of the related military orders governing the insurance policy and not the new Insurance Law of 2005 even if the accident took place after the new law became effective.

As to the driver's violations related to carrying more passengers in the car than the number stated in the car registration license, according to article 15 of the military order number 678 which states: "Any condition stated in the insurance policy which exempts the insurance company from its responsibility to compensate if the insured party violates the number of passengers stated in the insurance policy, such a condition shall be deemed as null and void"; the court decided:

First: There is a valid legal dispute between Palestine Insurance Company and Mohammad Tarayrah.

Second: Accepting the request of the Palestinian Fund in request number 74/2007 and rejecting the lawsuit of the plaintiff number 13/2007 (Mohammad Tarayrah) in relation to the second defendant (the Palestinian Fund) and order (Mohammad Tarayrah) to pay all costs, fees and 50 JDs as attorney's fees.

Third: Rejecting the Palestine Insurance Company request number 78/2007 and confirm the acceptance of the lawsuit filed against it provided that all fees, costs and attorney fees shall be paid by the losing party when the lawsuit is decided by the court.

Fourth: The trial court has to proceed in lawsuit number 13/2008 according to the applicable rules.

The first defendant (Palestine Insurance Company) did not accept this judgment so it appealed it before Jerusalem Court of Appeals and the appeal was registered under number 183/2007.

In trying the case, the court of appeals reached the conclusion that the trial court erred in understanding the judicial precedents it relied upon. According to the court of appeals, the trial court should have distinguished between two instances-related contracts. The first one occurs when a contract is established and the legal positions (obligations and rights) of the contracting parties are defined under an old law and before a new law comes into force. In such a case, there is no way to apply the immediate effect of new laws on the contracting parties and thus the contract will be entirely governed by the old law. The second situation occurs when the legal positions of the contracting parties are defined under the old law and are not entirely established under such law but rather under a new law. In such cases, we should not allow the continuing effect of the old law because the obligations and duties of the parties only matured and were clearly defined under the new law which has to govern such contractual issues. In addition, we should distinguish between two types of contracts. In the first type, the will of the contracting parties has the ultimate power in governing the contract. In the second type, there are some limitations on the will of the contracting parties by the legislator, because such contracts have an effect on the public order. Such contracts fall under the new theory regulating the effects of newly enacted laws.

In light of these principles, the insurance contract which is the subject of this lawsuit falls under the second category of contracts described above, where the legislator intervenes and imposes limitations on the free will of the contracting parties. Such an intervention by the Palestinian legislator is clear in articles 18, 21, 22, 179 and 182 of the Insurance Law number 20 of 2005 which came into force during the life of the insurance contract in hand and before the accident happened, thus it is the law that has to be applied by the court in trying this lawsuit.

*The insurance contract which was created (finalized) under the old law shall be governed (in relation to its requirements and the legal standing of each party) by the law under which it was created (that is, the old law), while the effects of such contract (the rights of the person injured in a traffic accident) shall be governed by the provisions of the new law (the law that was applicable when the traffic accident took place) that is the Insurance Law number 20 of 2005*

It is a proven fact that the car which caused the accident was insured by the Palestine Insurance Company and when the accident took place, it was carrying nine passengers in addition to the driver. Where the car is registered as a public transportation vehicle and allowed to carry only 7+1 passengers, as stated in its registration certificate (evidence # T/3), and where it is allowed to limit the number of passengers in public transportation cars only according to article 141/3 of the Insurance Law and the fact that the insurance policy limited the number of the passengers to seven plus the driver. Such a condition is a permissible condition and does not imply any abuse of power and was also included in the car registration certificate. Based on this, we find that Palestine Insurance Company should not be held liable and the court decides to revoke the appealed judgment (the judgment issued by the court of appeals) and decides to accept the request submitted by Palestine Insurance Company and reject the lawsuit filed against it and it orders the other two parties to pay fees, costs and 50 JDs as attorney's fees. It also decides to reject request number 74/2007 submitted by the Palestinian Fund and the return of the lawsuit to the trial court in order to proceed to try it according to what has been decided by this court provided that all costs, fees shall be paid by the losing party.

The appellant (objector) did not agree with the court of appeals' judgment and brought this appeal (objection) before this court (the Cassation Court).

The fact that the appeal was submitted to this court during the legal period and confirms with all formality requirements this court decided to accept to reject it.

In relation to the subject matter of this appeal, the question here is to identify the appropriate law the court should apply in the lawsuit. The general principle states that new laws shall be applicable directly after they come into force, thus it should be applied to obligations and rights which are established after its enactment and it should not affect any legal status (rights and obligations) which were established under a previous law. The fact that the insurance contract was established under the old law (the military orders), means that it should be governed by such orders in terms of its establishment but the effect of this contract and the rights it grants the persons who were injured during the related traffic accident should be governed by the new law which was in force when the accident took place - that is, the Insurance Law number 20 of 2005.

Thus we find that the court of appeals, when applying the direct effect of the new law (the Insurance Law number 20 of 2005), mixed between the establishment of the insurance contract and its effects. This is obvious from its decision which states that the insurance contract was not fully established until the accident took place which obligates the insurance company to compensate the victims of the accident. The correct interpretation is that the obligation of the insurance company to compensate the injured person is one of the effects of the insurance contract and could not be construed as one of the elements of its establishment.

According to the above argument we should interpret and look for the contracting parties' will according to the law that was in place when the contract was established which is, in this case, the military order number 678 and where article 15 of this order prohibits the exemption of the insurance company from liability in case the number of passengers exceeded the number allowed and considers such condition in the insurance policy as void and null, and the fact that the insurance policy was issued while this prohibition was applicable, the term 7+1 in the policy should not be considered as a valid term in the contract and should not be interpreted that the will of the contracting parties was to exempt the insurance company from its liability and responsibility to compensate in case the number of passengers exceeded the number stated in the policy. This interpretation can also be validated by saying that the parties did not agree to include a term in the contract which is in violation of the public order when the contract was established. Accordingly, we find that the judgment of the court of appeals violates the applicable law and should be revoked.

For the above reasons this court (the Cassation Court) decides to revoke the court of appeals judgment and to return the lawsuit and all its documents in order to start the proceedings according to the above illustrated decisions.

This Judgment is issued in the name of the Palestinian People on November 13, 2008.

The court of appeals reviews judgments and decisions issued by the first instance courts in its appellate capacity (judgments related to appealed conciliation courts' judgments and decision before the court of first instance) provided that such a court is located within the related court of appeals' geographical jurisdiction. The court of appeals also reviews judgments and decisions issued by the courts of first instance in their capacity as first level trial courts. Finally, decisions and judgments issued according to summary procedures shall be appealed before the appellate courts regardless of the type of the first level court that issued such judgments and decisions. All final judgments issued by the conciliation courts can be appealed directly before the courts of appeals if there is a violation of the rules of jurisdiction related to public order or in case the judgment issued is null and void or the procedures followed were null and void and affected the judgment.

It is allowed to appeal all judgments and decisions within the time period stated for appeal and if the judgment issued contradicts another judgment which is not yet final and both judgments have the same parties, reasoning and subject matter. In such a case, the previous judgment should be appealed by law unless it became a final judgment before the new case was filed.

#### Periods for Appeals

Principle: An appeal request has to be submitted within thirty days of the date the judgment being appealed was issued unless the law states otherwise. For urgent matters, the period for appealing such judgments is fifteen days.

What would be the case if the judgment in question was issued on the basis of fraud - whether through fraud committed by one of the parties, forged documents or fraudulent acts that led to evidence not being submitted? In such cases, what is the period for appealing the judgment or decision?

In a case of fraud, such as those listed above, the period for appeal is determined by the timeline of the fraud. So, the period of appeal would start from the date the fraud began, or the day the perpetrator confessed to committing forgery, or the day a final judgment convicting him/her of forgery is issued, or from the day the witness who committed perjury is convicted, or the day the hidden document appears.

#### How the List of Appeal is submitted

The list of appeal has to be submitted to the court of appeals clerks' office. Attached to the list there should be a number of copies equal to the number of persons the appeal is directed against.

#### What should be included in the List of Appeals:

Article 208 of the Civil and Commercial Procedures Law states that the list of

## Courts of Appeals Judges who were promoted to become High Court Judges on April 1 2009

Judge Ali Kamel Ali Alfara



Chief Judge of Gaza Court of Appeals  
 Birth Date: 1944  
 · Bachelor Degree in Law from University of Alexandria  
 Appointed as a judge in the Palestinian Judicial Authority on March 28, 1995.  
 Promoted to a Court of Appeals judge on October 10, 2005 .  
 Promoted to a High Court judge on April 1, 2009.

Judge Hani Bolus Salim Al Nator



Chief Judge of Jerusalem Court of Appeals  
 Birth Date: 1960  
 · Bachelor Degree in Law from Beirut - Arab University (Alexandria Campus) .  
 Appointed as a judge in the Palestinian Judicial Authority on February 16, 1991.  
 Promoted to a Court of Appeals judge on October 10, 2005 .  
 Promoted to a High Court judge on April 1, 2009.

Judge Ibrahim Shehik Abedrabo Amro



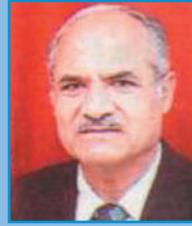
Birth Date: 1953  
 Master's Degree in International Relations from Karachi University. Bachelor's Degree in Law from Beirut Arab University  
 Appointed as a judge in the Palestinian Judicial Authority on December 1, 1998. Promoted to a Court of Appeals judge on July 23, 2002. Promoted to a High Court judge on April 1, 2009.

Judge Hassan Mohammad Ibrahim Al Jadba



Birth Date: 1950  
 · Bachelor's Degree in Law from University of Alexandria  
 Appointed as a judge in the Palestinian Judicial Authority on March 28, 1998.  
 Promoted to a Court of Appeals judge on October 26, 2005.  
 Promoted to a High Court judge on April 1, 2009.

Judge Abdul Raheem Abdul Kareem Mustafa Abu Hashim



Birth Date: 1941  
 · Bachelor's Degree in Law from University of Alexandria  
 Appointed as a judge in the Palestinian Judicial Authority on March 28, 1995.  
 Promoted to a Court of Appeals judge on October 10, 2005.  
 Promoted to a High Court judge on April 1, 2009.

Judge Mohammad Khalil Rasheed Al Sayad



Birth Date: 1954  
 · Bachelor Degree in Law from Cairo University  
 Appointed as a judge in the Palestinian Judicial Authority on July 11, 2005.  
 Promoted to a High Court judge on April 1, 2009.

Judge Salwa Kamal George Al Sayeg



Birth Date: 1950  
 · Bachelor's Degree in Law from Cairo University.  
 Appointed as a judge in the Palestinian Judicial Authority on May 1, 1995.  
 Promoted to a Court of Appeals judge on October 10, 2005.  
 Promoted to a High Court judge on April 1, 2009.

Judge Khaled Hassan Ibrahim Abu Jaber



Birth Date: 1946  
 · Bachelor's Degree in Law.  
 Appointed as a judge in the Palestinian Judicial Authority on March 28, 1995.  
 Promoted to a Court of Appeals judge on October 10, 2005.  
 Promoted to a High Court judge on April 1, 2009.

Judge Salah Mohammad Salah Mana'a



Birth Date: 1940  
 · Bachelor's Degree in Law from Beirut - Arab University  
 Appointed as a judge in the Palestinian Judicial Authority on January 1, 1988.  
 Promoted to a Court of Appeals judge on October 10, 2005.  
 Promoted to a High Court judge on April 1, 2009.

appeal should include the following:

1. Name of the related court of appeals.
2. The name of the petitioner (the person submitting the appeal), his/her address and profession in addition to his/her attorney and his/her address.
3. The name of the person against whom the appeal is being submitted and his/her address and profession.
4. The appealed decision or judgment in addition to the name of the court that issued the decision or judgment, the date the judgment or decision was issued and the number of the case.
5. Reasons behind the appeal.
6. The requests of the person appealing.
7. The signature of the empowered lawyers on the list of appeal.

**How the List of Appeal is Notified**  
 Relevant parties must be notified of

the list of appeals according to the rules governing the notification of judicial papers stated in articles 7-20 of the Civil and Commercial Procedures law.

#### The Effects of Submitting an Appeal

The submission of an appeal results in halting the enforcement of the appealed judgment or decision until the court of appeals issued its judgment. This is the general rule but in some cases, referred to "speedy enforcement" judgments, the appeal does not halt the enforcement of such judgment or decision. The speedy enforcement of the judgement would be stipulated by the law or stated in the judgment. Despite the effect the appeal has on the enforcement of judgments and decisions, certain precautionary enforcement meas-

ures can be taken in accordance with the appealed judgment or decision. In such a case, if the judgment was revoked on appeal, such precautionary measures would have to be halted and reversed. The court of appeals has the power to join together all multiple appeals which are related to the same judgment or decision if the reason and subject matter of these appeals are the same.

The party against which the appeal is submitted has the right to submit his/her list of responses within fifteen days from the day the party was notified of the list of appeal. In addition, the court has the discretionary power to allow any of the parties to amend his/her list (whether the list of appeal or the list of response) if there are serious reasons for such an amendment.

To submit an appeal, the lower

# It's Role, its Jurisdiction and its Judges

## Appellate Courts' Judges

**Judge Azaam Abdullah  
Zare' Al Astal**



Birth Date: 1952  
· Bachelor's Degree in Law from University of Alexandria.  
Appointed as a judge in the Palestinian Judicial Authority on August 3, 1996.  
Promoted to a Court of Appeals judge on May 1, 2008.

**Judge Ra'ed Mustafa  
Abdul Hameed**



Birth Date: 1965  
· Bachelor's Degree in Law from Cairo University, Egypt.  
Appointed as a judge in the Palestinian Judicial Authority on April 1, 2006.  
Promoted to a Court of Appeals judge on May 1, 2008.

**Judge Mohammad Haj Ahmad  
Mohammad Suliman Omar**



Birth Date: 1957  
· Bachelor's Degree in Law from Asuit University, Egypt.  
Appointed as a judge in the Palestinian Judicial Authority on August 3, 1986.  
Promoted to a Court of Appeals judge on May 1, 2008.

**Judge Tayser Abdul  
Jabar Musa Abu Zaher**



Birth Date: 1957  
· Master's of Law from Ein Shams University - Cairo.  
· Bachelor's Degree in Law from University of Alexandria.  
Appointed as a judge in the Palestinian Judicial Authority on February 1, 1988.  
Promoted to a Court of Appeals judge on May 1, 2008.

**Judge Adnan Abdul Kareem  
Mohammad Al Shuaybi**



Birth Date: 1956  
· Bachelor's Degree in Law from Ein Shams University.  
Appointed as a judge in the Palestinian Judicial Authority, as Ramallah Court of Appeals Chief Judge, on June 1, 2008.

**Judge Abdul Rahman Mahmoud  
Abdul Rahman Abu Jundi**



Birth Date: 1952  
· Bachelor's Degree in Law from Mansoura University.  
Appointed as a judge in the Palestinian Judicial Authority on August 3, 1996.  
Promoted to a Court of Appeals judge on May 1, 2008.

**Judge Ezat Ahmad  
Mahmoud Musa Alrameni**



Birth Date: 1956  
· Master's of Regional Studies from Al Quds University, Abu Dies.  
· Bachelor's Degree in Law.  
Appointed as a judge in the Palestinian Judicial Authority, as an Appellate Court Judge, on June 1, 2008.

**Judge Ruslan Arafat  
Abdullah Hamdan**



Birth Date: 1946  
· Bachelor's Degree in Law from Beirut - Arab University.  
Appointed as a judge in the Palestinian Judicial Authority on April 1, 2006.  
Promoted to a Court of Appeals judge on May 1, 2008.

**Judge Yousef Shukri  
Michael Al Salibi**



Birth Date: 1948  
· Bachelor's Degree in Law from University of Alexandria.  
Appointed as a judge in the Palestinian Judicial Authority on February 16, 1991.  
Promoted to a Court of Appeals judge on May 1, 2008.

**Judge Mustafa  
Ahmad Jum'a Al Qaq**



Birth Date: 1953  
· Bachelor's Degree in Law from Muhammad Bin Abdullah - Fez.  
Appointed as a judge in the Palestinian Judicial Authority on June 1, 1997.  
Promoted to a Court of Appeals judge on October 23, 2002.

**Judge Seraj Jaber  
Nouman Al Khazendar**



Birth Date: 1959  
· Bachelor's Degree in Law from Ein Shams University.  
Appointed as a judge in the Palestinian Judicial Authority on August 3, 1996.  
Promoted to a Court of Appeals judge May 1, 2008.

**Judge Yousef Khalil Abdul  
Aziz Abu Latifah**



Birth Date: 1957  
· Bachelor's Degree in Law from University of Alexandria.  
Appointed as a judge in the Palestinian Judicial Authority on August 3, 1996.  
Promoted to a Court of Appeals judge on May 1, 2008.

**Judge Fayez Soleiman  
Ahmad Zyara**



Birth Date: 1952  
· Bachelor's Degree in Law from University of Alexandria.  
Appointed as a judge in the Palestinian Judicial Authority on August 3, 1996.  
Promoted to a Court of Appeals judge on May 1, 2008.

**Judge Nasaar Hana  
Mansour Nasaar**



Birth Date: 1952  
· Ph.D in Law from Rennes University, France.  
· Bachelor's Degree in Law.  
Appointed as a judge in the Palestinian Judicial Authority on September 1, 1995.  
Promoted to a Court of Appeals judge on May 1, 2008.

**Judge Hilmi Faris  
Hilmi Al Kukhon**



Birth Date: 1957  
· Bachelor's Degree in Law from University of Mansoura.  
Appointed as a judge in the Palestinian Judicial Authority on November 1, 1986.  
Promoted to a Court of Appeals judge on May 1, 2008.

court has to refer the case file to the court of appeals. The court of appeals then orders the appealing party to pay the appeal fees. If the fees were not paid and no valid excuse was given, the court of appeals has to reject the appeal. After collecting the fees, the court of appeals sets a date to review the appeal and the parties are notified of the date. The party against which the appeal is submitted has the right to submit a counter appeal before the end of the first hearing. If the counter appeal is submitted after the appeal period, then it should be considered as an attached appeal and shall be dismissed if the original appeal was dismissed by the court. If the court of appeals decides to accept the abandonment of the original appeal, the attached appeal has to be dismissed as a

result of such decision.

The appeal of the final judgment issued in the case means the appeal of all decisions and interlocutory judgments issued during the trial of the case, unless such decisions and judgments were explicitly accepted by the appealing party. The appeal of the judgment issued in a precautionary request means the appeal of the judgment issued in the original request.

In effect, the appeal makes the related case return to the point before the final appealed judgment was issued, in relation to all procedures and decisions which are not included in the appeal.

The court of appeals has to review the appeal based on the evidence, arguments and new defenses submitted to it and all other evidence and arguments submitted before the first level court -

the trial court.

The court of appeals has to reject any new requests which were not submitted before the trial court. The only new requests the court of appeals can accept are those related to fees, salaries and other attachments which are due after the submission of the original requests before the trial court.

If the court of appeals rules that the appeal is submitted without basis and only to delay the enforcement of the trial court's judgment, then it has the power to order the appealing party to pay compensation. Unless the law provides otherwise, no new party who was not a party in the case before the trial court shall be entered on appeal. No person shall be granted the request of joining the appeal unless he/she re-

quests to join one of the parties.

After the court ensures that the appeal fulfills all legal requirements, it shall accept the appeal request on those grounds, and shall move to review the subject matter of the appeal. The court of appeals might confirm the judgment of the lower court, provided that it offers reasons for its decision or it might nullify the lower court's judgment or it can issue a new judgment according to the law and evidence submitted.

If the lower court's judgment by which it rejected the request to dismiss the case on grounds of lack of jurisdiction or already decided by another court or the expiration of the statute of limitations or any other reason related to formalities was nullified by the court of appeals, then it has to

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· Bachelor's Degree in Law from Cairo University, Egypt.  
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refer the case back to the lower court in order to be decided on it.

Trials on appeal are subject to the same rules which govern the trials in the lower courts in terms of the parties' attendance or in relation to procedures, unless the law provides otherwise.

## Chief Judges say that effective court administration will help to decentralize courts management and enhance the administrative performance of the courts, allowing them to accommodate the continuing development process in the judiciary

Chief Judges from the various appellate and First Instance Courts in the West Bank, discussed during their first meeting held in Jericho on March 25 and 26, 2009, the effects of the establishment of the SJC's Courts' Administration Department on the courts' performance. They also discussed the regulations and procedures that would govern the court's administration units.

The President of both the High Court and of the Supreme Judicial Council, Judge Issa Abu Sharar, said that: "The goal behind such a meeting is to create a communication channel between the chief judges and chief clerks at the various courts and the Courts' Administration Department of the Supreme Judicial Council, to enhance the courts' performance and support the independence of the Palestinian Judiciary."

He added: "The Courts' Administration Department will be responsible for carrying out all duties related to the administrative staff of the courts, and for providing the courts with the necessary human resources. The Courts Administration Department is in the phase of developing a detailed organizational structure, where the General Secretariat of the Supreme Judicial Council will only oversee the judge's affairs."

Justice Abu Sharar also stressed that: "According to judiciary law, the court's chief

judge is the one who has the ultimate responsibilities and powers related to the court's administration and management. The appointment of court managers who would function under the supervision of the chief judge would reduce the workload of the chief judge, which will give him/her more time to focus on the judicial functions of the court, especially handling of backlog, and to exert more control on the processing of cases in order to speed up the litigation process and reduce delay."

He also made note of the many developments taking place in the administrative departments and units in the courts, especially in the Chief Clerks' Offices, the Enforcement Departments, and Notary Public Departments in addition to infrastructure improvements.

He added that: "2009 will be the year in which judiciary's human resource needs shall be fully met, provided that the Palestinian government gives the judiciary the 30 new posts allocated in the 2009 annual budget according to the promise made by the Prime Minister."

Judge Ezat Rameni said: "The mission of the Court Administration Department is to enhance the financial and administrative performance of the courts in addition to the performance of the administrative staff. The department will also work on defining the needs



of the courts in order to include them in the Supreme Judicial Council's annual budget."

He clarified that an organizational structure had been developed in accordance with the judiciary organizational structure published in the Official Gazette. The management of the Courts Administration Department will consist of a head of the department and his/her deputy, whom must be sitting judges. It also includes three general directorates: the administrative affairs directorate, the financial affairs directorate and the quality control directorate.

Judge Rameni also mentioned the development of internal regulations that treat each court as an administrative unit of the Supreme Judicial Council. In addition to these internal regulations, a work plan for the department has been approved by the Supreme Judicial Council.

The Chief Judges also discussed the anticipated effects of establishing the Courts Administration Department, stressing that the establishment of such a department would enhance the decentralization of the courts' management. According to the approved plan, each court would be able to develop its own work strategies which would need to fit within the general strategy of the Supreme Judicial Council. Each court will have its own budget that would cater to the

court's own needs. Such a budget will be part of the judiciary's general budget. Judges will have more discretionary powers in supervising the processing of cases and avoid any undue delays in the courts judicial functions.

The participants heard a presentation by Attorney Husain Abu Hanoud on the results of a survey study conducted in cooperation with the USAID-funded Netham project. The study targeted both disposed and pending cases in certain courts during 2007-2008.

Judge Azmi Al Tanjeer Head of the Judicial Inspection Department spoke about the role of the chief judge in administrative inspection, especially in inspecting the judges' conduct and their adherence to work hours. He stressed that the judges should use fair and clear standards when evaluating the judges' and administrative staff performance.

He also added that: "The chief judge has to also supervise the work of the administrative staff and make sure that they treat the public and lawyers in a fair way and without any discrimination. Such continuing supervision would enhance the performance and conduct of the court's administrative staff."

At the end of the meeting, the participants agreed to hold periodical chief judges' meetings to discuss the obstacles facing the courts and seek appropriate tools and solutions.

### The President of the Supreme Judicial Council Meets with the Members of the Legislative Council's "Judicial Laws Committee"



His Excellency Justice Issa Abu Sharar, President of the High Court and President of the Supreme Judicial Council, met on March 31, 2009, with a delegation representing the Legislative Council's "Judicial Laws Committee." The delegation included the following members: Waleed Assaf (Committee Chairman), Muheeb Awad (MP), Sahar Quasmih (MP), Najat Abu Baker (MP), and Attorney Mohammad Jalad (Legal Department).

The delegation attended a presentation on the recent developments in the Judiciary, presented by H.E. Justice Abu Sharar, who spoke about the importance of supporting the many legislative amendments related to the judiciary, especially the General Amnesty Draft Law and the Regular Courts' Formation Draft Law. He also added that the enactment of these two draft laws would assist the judiciary in exerting full control of the case backlog and delays that are largely the result of the Intifada years.

The delegation members posed questions related to the judiciary, especially on the formation of the courts and the types of cases that should be included in the General Amnesty Law in case it is adopted by the Legislative Council. They also inquired about the number of judges and their distribution and promotions, in addition to other issues related to the judiciary.

The delegation pointed out that the com-

mittee had finalized the needed amendments related to the General Amnesty Law. The amendments were made to prevent criminals who had committed serious crimes against society from benefiting from such a law and thus to escape punishment. MP Assaf said that the committee will continue to discuss the amendments.

The delegation attended a presentation by the head of the IT department, Mr. Murad Ruman, who demonstrated the various features of Al Mizan automated case management system and noted the importance of the system in helping the courts perform efficiently and providing security for all court files and documents. The presentation also highlighted the importance of the information that can be produced by the automated system to keep decision makers informed about the performance of the courts and case processing speed in each court. It also provides the Supreme Judicial Council with information needed to draft its future strategies and plans.

At the end of the visit, the delegation toured the premises of the court building accompanied by Mr. Majed Arori, Head of the Public Relations Department, where they visited a number of courtrooms in addition to various departments which provide direct services to the public, such as the Notary Public Department and the Enforcement Department.

### Unifying Procedures at the Civil Judgments Enforcement Departments

On February 23, 2009, His Excellency Justice Issa Abu Sharar (President of the High Court and President of the Supreme Judicial Council), issued a memorandum to all Conciliation and First Instance Chief Judges along with Judgments' Enforcement Judges. In this memorandum, he announced the unification of judgment enforcement that deal with enforcement files from the time of their registration until their disposition. Justice Abu Sharar said that the unified enforcement procedures will be taught in upcoming training programs for enforcement departments' staff. The consolidated procedures will serve as the basis for the judicial inspectors when they are checking the performance of the enforcement departments.

The unification of enforcement procedures deals with three issues: enforcement case registration, enforcement file management and closing the enforcement files. As part of the unification, it was decided that a list should be prepared of all abandoned enforcement case files (files left by the parties without any action for more than six months) and the files should be

stored in a designated place in the department.

The decision also stressed that no enforcement file should be closed until the enforcement judge decides to do so. It also makes it mandatory to ensure that no other payments must be collected before the judge issues his/her decision to close the file, and to ensure that the person requesting the enforcement has a legal standing to do so before registering the enforcement requests. The new directives also deal with issues related to the registration of the enforcement cases, such as the need to register the full names and addresses of the parties.

The decision issued by Justice Abu Sharar stressed that enforcement judges should draft enforcement decisions themselves and that enforcement officers should supervise the parties when they review the enforcement file. The decision also calls upon enforcement judges to rule on the financial competency of the debtor as soon as possible and to avoid prolonged delays by the parties so that hearings dealing with financial competency could not be sued as a way to halt or delay the enforcement of judgments.

## Victim's Complaints and Civil Claims: Their Role in the Criminal Case

Prepared by: **Fateh Hamarsheh**  
- Technical Office

Criminal proceedings may be triggered either by the victim of a crime or by the public prosecution, depending on the type of crime and on national laws.

By reviewing the Jordanian Criminal Code of 1960, we find that the legislator predicated the initiation of the criminal proceedings, in some crimes, to the submission of a complaint by the victim. A complaint is defined as: "Reporting the commission of a crime by the victim or his/her agent to the public prosecution or one of the authorized police officers in order to take the necessary legal actions against the perpetrator."

The following are the most important crimes whose prosecution depends on the submission of a complaint by the victim:

1. Adultery crimes, according to article 284 of the Jordanian Penal Code of 1960.

2. Intentional bodily harm crimes if the harm or disability did not cause the victim to require rest of more than ten days. Article 334 of the Jordanian Penal Code.

3. Incest crimes between siblings and between parents and their children according to article 364 and 365 of the Penal Code of 1960.

4. Home invasion crimes according to article 347 of the Penal Code.

5. Breach of trust crime according to article 422 of the Penal Code.

The public prosecution is not authorized to initiate criminal proceedings in such crimes unless a complaint is submitted by the victim. In such a case, the victim has the right to evaluate the circumstances and weigh whether to initiate the criminal proceedings against the perpetrator of the crime.

To prosecute slander and defamation cases, though, the legislator also requires that a civil claim be submitted (article 364 of the Penal Code). The Ramallah Court of Appeals issued the following decision: "In slander and defamation cases, if the victim did not submit a civil claim against the perpetrator, the court has to stop the criminal proceedings."

What, then, is the difference between a complaint and a civil claim? Does the civil claim include an implied complaint by the litigant?

Article 4 of the Criminal Procedures Law number 3 of 2003 states:

1) The public prosecution is not allowed to investigate or initiate criminal proceedings in a crime where the law requires that the victim or his/her agent submits an oral or a written complaint or a civil claim against the perpetrator or requires the prosecution to obtain permission or a request from the related party.

2) In cases where a complaint or a civil claim is needed to start the criminal proceedings, the victim has the right to drop the case at any time before the final judgment is issued. Article 3 of the previously mentioned law states: "The Public Prosecution has to initiate the criminal proceedings if the injured person him/herself submitted a personal civil claim according to the rules stated in law."

Before analyzing and discussing these legal provisions, we note that legislation in other legal systems differs in the level of discretion it gives to the public prosecution in initiating criminal proceedings. There are two major doctrines concerning the level of discretion the public prosecution has in initiating these proceedings: the Legal Doctrine and the Discretionary Doctrine. According to the first doctrine, the public prosecution is obliged to initiate criminal proceedings when it learns about the crime and it has no other option but to do so. This doctrine was adopted by France during the French Revolution in 1791 and by a number of states such as Germany, Greece and Austria. Contrary to the Le-

gal Doctrine, the Discretionary Doctrine gives the public prosecution the absolute authority to decide whether the criminal act deserves to be prosecuted. Such a doctrine has been adopted by many legal systems such as the Italian, Swiss, and all Arab legal systems.

In legal systems that give full authority to the public prosecution in deciding whether to initiate criminal legal proceedings, this authority is still curtailed if the victim of the crime submits a civil claim. Such a claim obliges the public prosecution to initiate criminal proceedings. Article 3 of the Criminal Procedures Law of 2001 adopts this approach. This article gives the victim the right to compel the public prosecution to initiate the criminal proceedings against the perpetrator, provided that the victim submits a civil claim against that perpetrator.

In this respect, distinction should be made between the civil claim and the personal claim by the victim. The personal claim is a prerequisite for the initiation of the criminal procedures in one crime mentioned earlier and stated in article 364 of the Criminal Procedures Law of 1960 – that is, the crime of

defamation and slander. Criminal proceedings cannot be initiated in such a crime without the victim submitting a personal claim. In other crimes, however, a victim would compel the public prosecution to initiate the proceedings through a civil claim.

The prosecution's powers to initiate criminal proceedings differ between legal systems, nevertheless, must fall under one of two major doctrines: Legal Doctrine and Discretionary Doctrine. According to the Legal Doctrine, the public prosecution is obliged to initiate criminal proceedings when it learns that a crime has been committed, as for the Discretionary Doctrine, however, the public prosecution has the discretionary power to decide whether the committed act is worth prosecuting the perpetrator for, and thus it decides whether to initiate criminal proceedings.

The Difference between a Complaint and a Personal Claim

First we have to agree that a complaint differs from the civil claim submitted by the victim because the legislator has made such a distinction. The legislator mentioned the word 'complaint' separately from the term 'personal claim',

indicating that there is a distinction between the two. The legislator requires a complaint in order to initiate the proceedings in some crimes while he requires a personal claim in order to initiate the proceedings in slander and defamation crimes.

As to the difference between a complaint and a civil claim submitted by a victim, we can say that each civil claim is considered to constitute a complaint but that not each complaint constitutes a civil claim. If a victim of a crime submits to the public prosecution

a civil claim, this implies that a complaint has also been submitted by the victim requesting to be compensated for the harm he/she suffered.

Dr. Abdulwahed Humad states that: "It is worth pointing out that the submission of a complaint removes an obstacle that faces the public prosecution. Thus if such a complaint is submitted, then the public prosecution is free to pursue criminal proceedings, while the personal claim submitted to the public prosecution obliges the latter to initiate the proceedings." He also says: "In order for the personal claim to be accepted and have legal effect, the victim has to clearly state that he/she is taking the role of the civil plaintiff." As the Ramallah Court of Appeals stated in one of its judgments: "The court has to drop the criminal proceedings in a slander and defamation crime if the victim did not submit a personal claim and such a personal claim has to be stated clearly in the complaint and all related fees have to be paid."

Thus it is clear that the victim who submits a personal claim is the plaintiff who requests to be compensated, thus each and every plaintiff is a complainant and each personal claim includes a complaint.

Finally, we should distinguish between the role of the personal claim when it is a precondition for initiating the legal proceedings in a crime or when it obligates the public prosecution to initiate such proceedings, and when the civil case has to follow the criminal case. This distinction is clearly stated in article 194 of the Criminal Procedures Law. In the latter case, criminal proceedings could be initiated directly by the public prosecution without a complaint or a personal claim.

### Palestinian Regular Courts have 21 Sitting Female Judges

## Palestinian Women Judges: A Key to Justice

By Judge **Falasteen Abu Romi**  
Ramallah Conciliation Court

The experience of female judges in the Palestinian Judiciary is considered a very successful one and a direct result of the Supreme Judicial Council's progressive policies. These policies have enabled female legal professionals to enter the judiciary and serve alongside their male counterparts on equal footing. Female judges are working very hard in order to strengthen the judiciary and enable it to achieve its goals and objectives.

Despite the successes female judges have achieved, the fact that females are qualified to serve as judges is still the subject of much jurisprudential debate between many of the Islamic Shari'a scholars. Of these scholars, there were many who strictly opposed the idea of appointing female judges, while others felt it was permitted, with some restrictions. Such debate led to a long delay in granting females their right to assume their place on the bench in many Islamic and Arab countries.

In fact, Islam provides justice for women and calls upon its followers to treat them with fairness, as they constitute half of society. There isn't a single text in the Holy Quran that forbids women from serving as judges. As Almighty God says in the Quran: "The Believers, men and women, are protectors one of another: they enjoin what is just and forbid what is evil." In this verse of the Holy Quran, Allah gave women, as well as men, the right to enjoin what is just and to forbid what is evil. We see other examples of Islam empowering women. The Prophet Mohammad - may peace be upon him - said: "Take half of your religion from this Humair'a," giving the right to issue a Fatwa to the Mother of Believers, Aisha. And Caliph Omar Ben Al Khatab appointed a woman to settle disputes that might arise between merchants at the market.



The legal argument in favor of appointing female judges can be found in the Basic Law which confirms the equality principle and provides for equal opportunity. In addition to the Basic Law, the legal system gives women our political, legal and administrative rights without any prejudice or discrimination. Thus the problem is not related in the applicable legal provisions because there isn't a single provision or legal text that bans women from serving as judges. In addition, the Judiciary Law allows both men and women to join the Judicial Institute in order to become judges.

While Palestinian female judges were able to assume the most senior positions in the judiciary, Judge Iman Naseraldeem, who serves now as the Presiding Judge at one of the High Court's panels, says that many other Arab states are still debating the right of women to become judges. Despite such debates and contradicting points of view, a breakthrough in this regard has lately been achieved by the appointment of thirty female judges in Egypt. The Jordanian judiciary encouraged initiatives

to appoint female judges through the efforts of the President of the Supreme Judicial Council and the Director of the Judicial Institution. Females did not only excel in the judicial competition, but also efficiently disposed of the accumulated cases before the courts. Seven other Arab countries (Morocco, Sudan, Jordan, Syria, Lebanon, Yemen and Tunisia) also have female judges.

In Palestinian society, the role of female judges is deeply appreciated by civil society institutions and the private sector, in addition to regular Palestinian citizens. Male judges have also shown support for the appointment of women, whether through the training they provided for female judges or through supporting them and engaging them in the issuance of judgments. Female judges have been given many opportunities to chair judicial panels and participate in strengthening the judiciary and Palestinian society, a society that respects judicial decisions and judgments of women judges, considering them a key to justice.

## Precautionary Detention of Juvenile Defendants According to Applicable Palestinian Laws

By: Judge Daoud Dara'wi  
Nablus First Instance Court

The Palestinian judiciary takes a tough stand on the release on bail of juveniles accused of committing felony crimes. The judiciary tends to keep such defendants under precautionary detention until the criminal trial is over or a reconciliation agreement with the alleged victim is reached, whereby the personal claim is dropped. In light of such judicial practice, I will try, in this article, to answer an important question about the judge's discretionary power to keep juveniles in detention until the end of the criminal trial. I will also discuss the legal constraints that govern the release on bail of juvenile defendants.

In approaching this question, this article will first examine the new legislative amendments which affect procedural laws and, in particular, those amendments that deal with the issue of "precautionary detention". Such an examination will be done in light of the Palestinian courts' practices in the following areas:

### First:

#### The Palestinian Criminal Procedures Law of 2001

Article 120/5 of the Criminal Procedures Law states: "No accused person who has been arrested shall be under detention for a period of time which exceeds the penalty period stated for the crime he/she is accused of."

What is meant by the penalty period here is the length of the freedom-constraining sentence for the crime in question, as set by the legislator. Such penalties are divided into two categories: the first is defined in advance by the law (such as in death and life imprisonment penalties), and the second includes all other penalties which have a minimum and a maximum limits. Such penalties give trial judges a discretionary power which allows them to impose a suitable sentence they feel is suitable, provided that it is between these two time limits. In this regard, Dr. Mohamad Zaki Abu Amer states in his book "Criminal Law, Public Section" that: "The legislator does not state a fixed penalty defined by type and quantity for each crime, where the judge cannot increase or decrease such a penalty, instead the legislator provides for each crime a penalty which has a minimum and a maximum limits which are defined according to the legislator's view of the seriousness of the crime. By doing so, the legislator gives the judge the power to weigh the suitable penalty for each crime individually, in accordance with the sentence individualization principle. This argument means that the legal basis for any penalty has to be built on two pillars: the first one is legislative pillar which means that the judge, after establishing the facts of the case and correctly defining the crime the defendant has been convicted of, he has to check the applicable penalty, which is defined by the legislator according to the seriousness of the crime committed. This is a pure legislative function and a direct translation of the legality doctrine.

The second pillar is the legal base governing the application of the penalty. This is a judicial matter, whereby the law gives the judge the power to choose the most appropriate penalty (type and quantity) to be imposed on the convicted offender. The discretionary power that is given to judges strikes a balance between the gravity of the crime, as decided by society, represented by its elected legislators, and between the interest of society in imposing a penalty that is appropriate to the person convicted and the circumstances under which the crime was committed. In sentencing, the judge is only restricted by the penalty's limits stated in the law and the principles of toughening or mitigating the sentence within these two limits."

According to the above rationale, the length of the "precautionary detention" of any person accused of committing a crime, whether an adult or a juvenile, should not exceed the minimum limit set for the crime's penalty. Otherwise such detention would constitute an infringement on the judge's discretionary power in imposing the suitable penalty and a violation of the above discussed legality doctrine by de facto raising the penalty's minimum limit.

This leads us to assume that the judge has no power to keep a detainee accused of committing a crime under detention until the end of the trial proceedings, if such proceedings will take more time

than the minimum limit of the penalty stated for the crime. In instances where there are no minimum or maximum limits for the penalty to be imposed, the judge has the legal power to keep the accused detained until the end of the trial proceedings, such as in crimes punishable by the death penalty or life imprisonment. The only limitation on the judge in such an instance is that the trial proceedings should not be extensively delayed according to the constitutional provisions, which this article will discuss later.

To apply this rationale to juvenile defendants, we find that the judge's power in keeping the juvenile defendant under detention is constrained by the principle of the best interest of the juvenile, in addition to the stipulation that such detention shall not exceed the minimum limit of the penalty for committing the crime. These conclusions are based on article 120/5 of the Criminal Procedures Law and article 1, 12/3 and 13/7 of the Juvenile Rehabilitation Law of 1954. These articles state the following:

1. According to article 12/3 of the Juvenile Rehabilitation Law: "if an adolescent or a youth commits a felony punishable by death or life imprisonment with hard labor, the adolescent shall be sentenced by imprisonment for a period not less than three years and the youth for a period not less than five years."

2. According to article 13/7 of the same law: "He/she shall be admitted to a juvenile rehabilitation house or to any other institution designated for such offenders. The admittance to such institution shall be done through a decision issued by the Minister of Social Affairs and for a period not less than one year and not more than four years."

According to these provisions, the detention of any juvenile defendant who is accused of committing a crime punishable by the death penalty or by life imprisonment shall not exceed three years if such juvenile is an adolescent (between 13 and 15 years of age) and shall not exceed five years if he/she is a youth (between 15 and 18 years of age). As for all other felonies committed by juvenile offenders the imprisonment period shall not, in any case, exceed one year. Thus judges are obliged to release any juvenile offender if his/her detention exceeded the stated above time limits, despite the fact that the legislator does not provide the maximum penalty that should be imposed on juvenile offenders when they are convicted of a crime punishable by the death penalty or by life imprisonment.

The above argument is solely based on the interpretations of the applicable laws which differ from actual court practices. Palestinian courts had been very strict in releasing juvenile defendants on bail when there is no reconciliation agreement between the parties and the alleged victim has not dropped his/her personal claim against the defendant despite the fact that the time spent by many of these juvenile offenders in "precautionary detention" exceeds the minimum limit of the penalty to be imposed on them if they were convicted of committing the crime they are accused of.

The practice of the criminal courts in this area can be described as a judicial custom that contradicts the law. This custom is based on the former criminal procedures law which is still applied by the courts despite the fact that it negates the new applicable criminal procedures law introduced in 2001.

It suffices simply to compare the exceptions in the on-bail release requirements stated in article 123 of the former criminal procedures law and those exceptions stated in the current applicable criminal procedures law.

According to article 123 of the old criminal procedures law, any person who is accused or convicted of committing a felony punishable by the death penalty or by life imprisonment cannot be released on bail and – according to the same article – the on-bail release in all felonies is an exception to the general rule and can be done only under certain circumstances. This leads to the conclusion that "precautionary detention" can continue until a final judgment is issued in the criminal case. On the other hand, we find that the Palestinian legislator does provide an exception in the applicable criminal procedures law related to the on-bail release of accused individuals if the accused has a known place of residence. The only exception to the known place of residence rule concerns fugitive individuals, with article 145 of the criminal procedures law of

2001 stating that "the fugitive who is apprehended after an in absentia judgment is issued against him/her, shall not be released on bail". This leads us to conclude that it is prohibited, in any instance, to keep the accused individuals under precautionary detention until a final judgment is issued when the detention period exceeds the minimum limit of the penalty to be imposed if the accused is convicted. This conclusion is compatible with the provisions of the applicable Palestinian criminal procedures law of 2001 when applied in conjunction with the provisions of the Juvenile Rehabilitation Law.

Another important question also rises when dealing with such issue, that is: how would the juvenile defendant, once convicted, be reimbursed if he/she was detained for a period longer than the imprisonment penalty imposed by the court? Or would such an overly-long detention act as a self-imposed restriction by the court's discretionary sentencing power whereby the court compels itself, from the beginning, to impose an imprisonment sentence which exceeds the precautionary detention period?

Even if the above was interpreted in a way that took 'sentence period' in article 120/5 to mean the maximum limit of the penalty, such an argument would be invalid because it would indicate that ambiguities were interpreted against the defendant's interests while the well-established, universally accepted doctrine states that any doubt in the interpretation of a criminal provision shall be construed to the benefit of the defendant.

### Second:

#### The Palestinian Child's Law number 7 of 2004

Article 4 of the Child's Law states: "The following should be taken into consideration in any action related to children: 1) the best interest of the child in all procedures taken, whether such procedures or actions are taken by the legislator or the courts or the administrative authorities or the public or private social care institutions. 2) The child's mental, emotional and physical needs in accordance with his/her age, health and related similar factors."

The article cited above raises a pertinent question: is the precautionary detention of a juvenile defendant in the best interest of such a defendant? The Palestinian legislator provides an answer to this in article 69 of the Palestinian Child's Law which states, "3). Priority should be given to precautionary and educational measures and, to the extent possible, precautionary detention and other freedom restricting penalties should be avoided."

In summary, precautionary detention shall be considered as the last resort and not the preferred solution. According to the best interest of the juvenile defendant, judges are obligated, according to these legislative articles, to take into consideration the best interest of the juvenile offender – that is, his/her mental and emotional needs – and strive for a balance between the defendant's age and the action taken against him/her. The other factor judges must consider is the nature of the crime committed. The guarantees imposed by the Child's Law constitute a limitation on the judges' discretionary power in sentencing in this regard.

In addition to what has been stated above article 69 of the Child's Law states: "every child who has been accused of committing a crime has the right to be treated in a way compatible with his/her age and that protects his/her honor and dignity in addition to assisting his/her integration in the society and having a positive role in such society." According to this, we must ask: Does the prolonged detention of a juvenile offender until a final judgment is issued by the court constitute a treatment suited to his/her age? Does prolonged detention protect his/her honor and dignity? Does prolonged detention play a positive role in integrating him/her back into society?

### Third:

#### The Amended Basic Law of the Palestinian National Authority of 2003

All laws must be in conformity with constitutional provisions. The supremacy of constitutional provisions renders any legal provision which contradicts them null and void. So, despite the fact that many of the legal provisions which are still applicable in Palestine had been enacted many years

before the enactment of the Basic Law – such as the Penal Law and the Juveniles' Rehabilitation Law – they must be considered null and void when they contradict the applicable constitutional provisions stated in the Basic Law. When applying the constitutional supremacy principle, such legal provisions have to be amended in order to be in conformity with the new Basic Law. According to this argument, how could the legal provisions which allow the "precautionary detention" of juvenile offenders until the end of the criminal trial be enforced? Significantly, such detention is often prolonged due to the many factors which affect the length of the trial in the Palestinian context.

### To answer such questions, we have to review the following constitutional provisions:

1. Article 29/5 of the Basic Law states: "Providing care for mothers and children is a national duty, and children have the right to: 5) be separated from adult offenders in case a child is sentenced to imprisonment and such child shall be treated in a way that aims at rehabilitating him/her, in accordance with his/her age". This provision is in contradiction with article 4 of the Juveniles' Rehabilitation Law which states: "If an adolescent or a youth is sentenced to imprisonment or detention, efforts should be made in order to separate him/her from the other inmates who are over 18 years old, whenever such separation is possible." According to the Basic Law article stated above the separation is obligatory, while according to the Juveniles' Rehabilitation Law such separation is preferred, but optional. Which legal provision of these two contradicting ones shall prevail and be applied by the courts? According to the Basic Law provision, juveniles have the right to be treated in a way that aims to correct their behavior and has to conform to their age. Such a provision is also in a clear contradiction with the judicial custom applied by the courts which allow such courts to detain juvenile offenders for the period of the trial when they are accused of a felony. Shouldn't the courts apply the constitutional provision which clearly provides for a special treatment for juvenile offenders by extending such treatment to include their on bail release?

2. Article 12 of the Basic Law states: "Any person who is detained or arrested has to be informed about the reasons behind his/her arrest or detention. He/she should be notified immediately in a language he/she can comprehend of the accusations against him/her. He/she has to be able to contact a lawyer and has to be tried without any delay." It is very clear that the detention of a juvenile offender for a period that might reach many years is a grave violation of such constitutional provisions and it also contradicts the best interest of the accused juvenile. Legal jurisprudence calls on providing juvenile defendants with a speedy trial without any undue delay that might harm the interest of the accused and, in case there are external factors which render the speedy trial of the juvenile defendant impossible, the courts have to release such a defendant on bail. Such action by the courts conforms with the best interests of such defendants.

In summary, we can assert that the "precautionary detention" of juvenile defendants (until the end of the criminal trial) is a clear violation of the applicable laws and it infringes on the basic guarantees of a fair and just trial. Such detention is equal to arbitrary detention and violates basic individual freedoms stated in the Basic Law. In order to prevent such violations, the Palestinian Judiciary is requested to start implementing the legislator's rulings on the detention of juvenile offenders, which is clearly expressed in the above stated laws. The most important of these laws are the Basic Law and the Child's Law. The courts also have to take into consideration the best interest of juveniles in all judicial procedures and actions.

Finally, all judicial customs which violate the law shall not be able to affect the litigation rights in Palestine and illegally constrain public freedoms protected by the Basic Law. I end this article by stating the following legal principle: 'Justice would not be harmed if ten criminals were able to escape punishment but it would be greatly harmed if one innocent person is wrongly convicted of a crime committed by somebody else.'

# Judicial Literature



**Judge Mazin Sesalem**  
High Court Judge

*The drafting of judicial decisions and judgments is a critical skill that every judge has to master. To help judges perfect their drafting skills, and to educate the public, I offer a quick review of the key elements of drafting.*

*The most important element affecting judicial drafting is the ability to choose the right words and phrases to truthfully reflect in the judgment the judge's precise meaning. This is referred to as 'literature', meaning the art of expressing one's thoughts by using words, whether written or spoken. Literature in this context depends on the use of words; hence, words constitute the bases of this art, which in turn constitute language, our means of expression. People cannot express their thoughts unless they are fully knowledgeable of their language and its governing rules and methods of use. Legal professionals in general must have extensive linguistic abilities which enable them to properly express their thoughts. This ability is called, in our field of work, "Judicial Literature". If language is essential in any job related to the expression of views and thoughts, it is certainly critical in performing any legal work, especially if this work is related to judicial functions.*

For these reasons, all judicial institutions in the Arab states (including the renowned National Center for Judicial Studies in the Arab Republic of Egypt) give considerable attention to this subject and feature the subject of linguistic skills in all their educational programs.

One of the most important pieces that were published on this subject is a lecture given by Justice Ahmad Fathi Mursi, the Deputy Chief Justice of the Egyptian Cassation Court on August 31, 1997. The lecture was titled "Judicial Literature and Language Rules". In his lecture, Justice Mursi pointed out the importance of mastering the legal language and the rules of its use by legal professionals regardless of the legal job they perform.

As Justice Mursi states, the legislator uses language to draft the law, the Public Prosecutor uses it to argue before the court and draft legal memos and the judge uses it to draft judicial judgments and decisions. It is no exaggeration to say that language accounts for half of any legal or judicial work. Judicial work is half language and half law, because thoughts on legal matters have no effect until they are communicated to the listener or reader through language. It is also fair to say that it is difficult to distinguish judges from each other on the basis of their knowledge of the law as much as on the basis on their linguistic skills. The proper use of language rules does not mean a type of affectation or particular mannerisms of the speaker or the writer; rather, it means that such a person has mastered the rules of grammar. This is particularly true for the Arabic language, where intricate grammar rules shape the meaning of the phrase and any mistake in using them would greatly affect the intended

meaning. All judges have to master such rules and apply them skillfully because any mistake in sentence composition might skew the meaning, with potentially grave consequences.

## Style

The writer's or speaker's style rests upon the selection and correct use of phrases. Writing and speaking styles differ from one person to another and even, within one person, from one subject to another. When the writer deals with a political issue or subject his/her style may differ from when he/she is dealing with a scientific or emotional subject. In the legal area, the linguistic style used in drafting laws differs from that used in arguments before the court, judgments or even a court decision.

## Legislative Style

Legislation is addressed to all people regardless of their education or degree of legal comprehension, thus a legislator has to be very careful when drafting laws by choosing clear and simple phrases which can be widely understood. In addition the legislator has to choose flexible phrases that can accommodate all situations, whether those present at the time of enacting the legislation or those that might occur in the future. Legislation has to be stable because we cannot readily, and often, amend and replace our laws so that they capture and are applicable to new instances. For example, when the use of grenades in violent crimes started in Egypt in the 1940s, the legislator wanted to make criminal the possession of grenades and its use, which endangers human lives. In doing so the legislation did not state: "Whoever is found in possession of grenades or has used a grenade." Rather, the legislation stated: "Whoever is found in possession of explosives." The word explosives was used in order to make criminal the possession and use of grenades which were in use at that time and other forms of explosives that might be used in the future.

A similar flexibility of phrasing was used when the Egyptian legislator drafted the Penal Code of 1904. One of the main concerns at that time were to protect the railways from sabotage and aggression. However, the law then written did not state "whoever sabotages a train (...)" Instead it reads: "Whoever sabotages a means of public transportation (...)" Such language was used to extend the protection, as intended by the legislator, to future means of transportation that did not exist at that time such as cars, airplanes and even rockets – if, one day, they are used as a means of transportation. From the previous examples, it is clear that flexible phrasing in the drafting of legislation is required in order for the legislation to be valid for all times present and future.

## Judicial Judgments

Contrary to the style used by legislators, flexible phrasing is not needed – nor allowed – in the drafting of judicial judgments. The phrases composing judicial judgments should be clearly defined

and focused, thus, we cannot refer to a theft of a book as "the theft of a means of education." The stolen object has to be very clearly and accurately defined. This is the difference between the drafting style used by legislators and the style used by judges.

## The Style used in Arguments before the Court

The style used in arguments presented before the courts differs vastly from the style used in drafting laws. Arguments are used in order to simultaneously appeal to the judge's emotions and mind.

The prosecutor appeals to the judge's emotions when he/she talks about the seriousness of the crime and its impact on the society's safety and when asking the court to be tough on the defendant. When pursuing such an approach, the prosecution would use phrases that appeal to the judge's emotions. Conversely, a prosecutor might instead target arguments primarily to the judge's mind, leaning heavily on the evidence in the case and on its legal aspects. In such an approach, he or she would use a rational style, free of overt emotional tones.

## The Elements of the Judicial Judgment Drafting Style

The drafting style of judicial judgments has to be clear, concentrated, unified and to abide by language rules.

### 1. Clarity

The judicial judgment presents the judiciary's final word on the dispute which is the address of the truth, thus such truth has to be clear and free of any ambiguity. The wording of the judicial judgment shall be clear and cannot hold more than one meaning or one interpretation. The clarity of the judgment indicates that there is clarity in the judge's mind. When the judge's thoughts are clear, then his/her drafting style would be clear. An old Arabic expression states: "eloquence is in clarity."

### 2. Condensation and Summarizing

A judicial judgment has to be succinct and summarized. Summarization is another facet of eloquence. It is the expression of a thought so pithy that if one of such words is removed or changed the whole meaning would be affected. Any text where many phrases may be omitted without changing the meaning or main idea should be considered as a futile repetition of words.

This preference for succinctness is clearly evident in the texts of some of the courts' of appeals rulings, where they refer to some of the lower courts' judgments as showing useless repetition of facts or when it refers to certain phrases in the judgments as mere repetition with no additional value to the judgment. This leads us to say that the use of repetition should be avoided in judicial judgments.

The use of synonyms is one of the major possible flaws to affect a judicial judgment. Some judgments will use the word "injustice", but substitute "unfairness" in other places of the document, or the word "mercy" alongside "pity". Such synonyms can be used in arguments

before the court in order to stress their meaning or in order to have a more profound effect on listeners, but it should not be used in judgments as the meaning might become less understandable.

Condensation and abridgement were known features of Prophet Mohammad's way of speaking and also of Caliphs' letters and decisions in the early days of Islam.

This point is illustrated in a well known story Caliph Abou Ja'far letter to one of his governors who had been the subject of many complaints. The Caliph sent the following message to the governor: "People who complain against you are more than those who commend you, so either you straighten up or resign".

It is worth mentioning that summarizing is not an easy task. Proper summarizing requires a lot of effort and time. Woodrow Wilson, the former President of the United States of America, was once asked how much time he needed to prepare a ten minute speech. He said it would take him three days. Asked about a half-hour speech, he said it would require one day. And a speech that takes two hours? He replied that he could do it immediately, without any preparation.

## Unity of Style

Judicial judgments have to be drafted in one uniform writing style. If a judge has copied the facts of the case from the list of claims or the prosecution memo and then copied the defense arguments of the defendant or other parties as they are stated in their memos and even if the judge copied text from a legal source without editing and summarizing, the judgment lacks an important feature of judicial judgments – that is, the unity of the drafting style. The resulting judgment would be a heterogeneous mix of different styles and levels of writing and would appear as if it was written by four or five individuals and not a single judge, and the judgment would be, regardless of content, a relatively weak one.

In order to avoid such deficiency in drafting judicial judgments, the judge has to fully comprehend the facts of the case in addition to arguments presented by the defense during the trial. Judges must rewrite the facts in their own words, ensuring the text is homogeneous, coherent and drafted in the same style.

## Linguistic Rules

The most important factor in drafting a judgment is careful attention to the rules that govern the language. This requirement is not limited to the drafting of judicial judgments, of course, but encompasses all judicial writings such as indictment sheets or the prosecution arguments.

To be sure, judges are not required to be linguistics experts. They should, however, be fluent in the proper use of grammar rules. To achieve such fluency, judges are requested to rely on, besides their legal resources, a book or two that deal just with language rules. They should also keep a dictionary handy, as a reference to help them perform their judicial duties.

### Two Presidential Decrees Appointing New Conciliation Courts' Judges and Promoting Court of Appeals' Judges to the High Court

His Excellency Mahmoud Abbas, President of the Palestinian National Authority and Chairman of the Palestinian Liberation Organization, issued two presidential decrees on March 26, 2009. According to the first decree, 11 new conciliation court judges have been appointed in the northern districts courts and, according to the second decree, nine appellate court judges were promoted to the High Court according to nominations submitted by the Supreme Judicial Council. The Supreme Judicial Council decided upon the nominated judges during its meeting on February 8, 2009.

According to the first decree, the following judges were appointed as Conciliation Courts' Judges in the northern district courts:

1. Majed Abdul Kareem Mahmud Masharqah
2. Fahmi Mufeed Mohammad Al Owaiwi
3. Basaam Mohammad Abdul Qader Zaid
4. Amer Mamdooh Hamed Marmash
5. Wisam Mohammad Jawdat Saleem
6. Mohammad Jamel Ya'coub Ismail
7. Ahmad Fareed Abdul Kareem Hanoun
8. Basheer Awad Mohammad Suliman
9. Abdul Malik Salamah Abdul Malik Samodi
10. Mohammad Abdul Rahman Mohammad Hantoly
11. Shadi Husain Mahmoud Al Jamal

According to the second decree, the following judges were promoted from several courts of appeals to the High Court:

1. Judge Ali Kamil Ali Al Faraa
2. Judge Ibrahim Shehdeh Abed Rabuh Amro
3. Judge Khalil Mohammad Rasheed Al Sayad
4. Judge Hani Bulos Saleem Al Natour
5. Judge Abdul Raheem Abdul Kareem Mustafa Abu Hashem
6. Judge Khaled Hasan Ibrahim Abu Jaber
7. Judge Salwa Kamal George Al Sayehg
8. Judge Hassan Ibrahim Mohammad Al Jadbah

The two decrees stated that all related authorities have to execute the two decrees and they shall come into force on April 1, 2009 and shall be published in the Official Gazette.

### As an Indicator to the Reduction in Case Backlog

## Conciliation Courts Achieved a 168% Disposition Rate, when comparing the Number of Disposed Cases vs. Newly Filed Cases in the First Four Months of 2009

The Numbers of Newly Filed and Disposed Cases before the Conciliation Courts (CC) and First Instance Courts (FIC), Traffic Cases (TC) from 1-1-2009 to 30-4-2009

Court Name	FIC New Filings	FIC Disposed	CC New Filings	CC Disposed	TC New Filings	TC Disposed	Total Filings	Total Disposed
Jericho	52	72	290	387	1359	1359	1701	1818
Hebron	533	752	687	1284	2604	2604	3824	4640
Tulkarem	344	148	1001	1248	1012	1014	2357	2410
Nablus	482	569	1283	2206	3220	2249	4985	5024
Bethlehem	192	221	554	1065	2323	2296	3069	3582
Qalqilya	107	107	587	1166	1032	1036	1726	2309
Jenin	276	128	964	1808	2230	2226	3470	4162
Ramallah	490	403	1418	1878	5454	5454	7362	7735
Dura	-	-	500	1250	1265	1265	1765	2515
Salfeet	-	-	313	510	759	760	1072	1270
Halhoul	-	-	364	644	830	834	1194	1478
Tubas	-	-	321	504	501	515	822	1019
<b>Total</b>	<b>2476</b>	<b>2400</b>	<b>8282</b>	<b>13950</b>	<b>22589</b>	<b>21612</b>	<b>33347</b>	<b>37962</b>

The statistics provided by the various West Bank courts showed that, for the first time in recent history of the Palestinian Judiciary, the courts had achieved a breakthrough in processing cases, with some reaching a disposition rate of 168% when comparing the number of disposed cases to newly filed cases during the same period.

The statistical information showed that the Conciliation Courts during the

first four months of 2009 disposed of a total of 13,950 cases and they received a total of 8,282 new cases during the same period of time. For the first time since the start of the Intifada in 2000, when the courts gained considerable case backlogs, the number of pending cases is on the decrease.

According to the same statistics, the First Instance Courts concluded a total of 2,400 cases during the first four months

of 2009. During the same period, these courts received a total of 2,476 cases, leading to a disposal rate of 97 percent – the highest in the history of the first instance courts.

Traffic cases had a similarly high disposal rate: 96 percent. The Conciliation Courts disposed of 21,612 traffic cases and received a total of 22,589 new cases during the period surveyed.

## Jenin Courts' Central Building Inaugurated

Under the patronage of His Excellency Mahmoud Abbas, President of the Palestinian National Authority, the Judiciary celebrated the inauguration of Jenin Courts' Central Building which houses both Jenin Conciliation and First Instance Courts. The opening took place on March 19, after the Supreme Judicial Council provided the court with the necessary furniture and all the court files from the old building had been transferred to the new offices.

Mr. Hikmat Zaid, the President's Advisor on Districts Affairs, said in his speech that President Abbas gives the development and strengthening of the judiciary his utmost attention. This stems from President Abbas's belief that

the judiciary is the cornerstone in preserving law and has immeasurable effects over the Palestinian people's lives.

Justice Issa Abu Sharar, President of the Supreme Judicial Council and President of the High Court, said that the judiciary has achieved many of its strategic plan objectives for the first time since the establishment of the Palestinian National Authority (PNA).

Mr. Condo Tchochi, Japan's Representative to the PNA, expressed happiness to see the opening of the new courts' building in Jenin especially that such an event came at a time of a stable security situation in Jenin. He noted that his government allocated 1.4 million USD to establish this building.

Mr. Robert Valent, the Special Representative of the United Nations' Development Program, said that UNDP played a substantial role not only in the reform process and helping to build the PNA's capacity, but the agency also supported the decentralization of local governance.

Dr. Howard Sumka, Mission Director of the United States Agency for International Development, stressed that there can be no security without rule of law. He also praised Jenin's Governor Qadurah Musa for helping to restore calm in the city by enforcing order and security.

At the end of the ceremony H.E. Justice Abu Sharar presented a gift of appreciation to Japan's representative, followed by a tour of the building by the court's chief judge.



  
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