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IN THIS ISSUE

Palestinian Judges Convene Second Judicial Conference



P 2

Terms in the Palestinian Laws and their Interpretation

P 6

Abu Sharar Inaugurates the Bethlehem Courthouse



P 9

The Beginning of the New Judicial Year



P 12

Qadaona Newsletter



Article (9) of the Amended Basic Law issued in 2003

All Palestinians shall be equal before the law and the Judiciary shall not discriminate based on race, sex, color, religion, political views, or disability.

October 2009

12 Pages

(Issue no. 3)

During Last Nine Months of 2009

Conciliation and First Instance Courts dispose 82,401 cases and achieve a 15% reduction in Judicial Backlog

For the first time since over nine years and during the past nine months of 2009, the Conciliation and First Instance Courts in the West Bank succeeded in achieving breakthroughs in the number of accumulated filings since the outbreak of the Intifada. The courts have disposed of about 8,812 cases out of 5,8384 cases which have accumulated since 2000. This means that the number of cases disposed by the courts exceeded the number of new filings and that the courts have made significant progress in disposing the accumulated cases by 15% of the overall court filings.

According to the statistics of the Supreme Judicial Council, the Conciliation and First Instance Courts have disposed of 82,401 cases during the

Period of Time	Number of New Filings	Number of Disposed Filings
First Nine Months of 2009	73580	82401
2008	77515	75876
2007	52452	45660
2006	60051	57334

Table indicating the number of new filings and disposed cases during the current year compared to the last three years

last nine months and in return have received 73,580 new filings. This means that the courts progressed during the first nine months of 2009 compared to what was achieved all through 2008. During 2008, the courts disposed of about 75,876 cases and received 77,515 filings during the same year.

The filings which were disposed of by

the courts are distributed as follows: 4,331 cases at the First Instance Courts, 27,943 cases at the Conciliation Courts, 50,127 traffic violations disposed of by the Conciliation Courts, whereas the number of new cases at the First Instance Courts was 4,918; at the Conciliation 18,595; and the traffic violation filings were 50,127.

Editorial

Unprecedented Development of the Palestinian Judiciary

By: Head of High Court and Chief Justice Issa Abu Sharar

The Palestinian Judicial Authority (PJA) has already accomplished much, and it is currently passing through an unprecedented development stage since the establishment of the National Palestinian Authority.

This process of development started at the end of 2000, following a seven-year period of extreme difficulty. The second Intifada broke out and the Israeli military forces demolished the constituents of the Palestinian Authority, segregated the Palestinian territories, and restricted movement. Moreover, the elections took place in 2006 and the Hamas victory was followed by an international embargo on the Palestinian Authority. What also paralyzed the operation of the judiciary in Palestine was the strike held by public officials working in the institutions of the Palestinian Authority.

In 2007 Palestinian society experienced division following Hamas' military control of the Gaza Strip, including Palestinian courts. As a result, judges in regular courts were excluded and prevented from performing their duties and responsibilities.

This difficult period came to an end in 2007, and the Palestinian government, headed by Dr. Salam Fayyad, responded to the needs of the High Judicial Council and managed to rescue judicial institutions from collapse. It was clear to the government that an independent judicial authority had to be established. During the next two years (2008-2009) the development of the Palestinian judiciary was launched in an unprecedented manner, and a new period of resuscitation and revival began.

This article was originally written for 'This Week in Palestine' in English.

-cont. Page 10-

Prime Minister Pays a Visit to the High Court and the Supreme Judicial Council and meets with the Head of the High Court and Several Judges

Prime-Minister Salam Fayyad paid a visit to the Supreme Judicial Council on April 30th, 2009. During the visit he held a meeting with His Excellency Judge Issa Abu Shrar, Head of the High Court. He held another meeting with the members of the Supreme judicial Council and heads of the administrative departments at the Judiciary.

The Prime Minister said that the commitment of the government towards the Judicial Authority is genuine, strong, and will continue until work in this practical and significant sector is completed. He said that the Palestinian Authority has accomplished a lot in maintaining safety and security for the Palestinian People and that the sector of justice has to be supported until the citizens reach a feeling that equity and justice have been fulfilled. Therefore, work in the judicial sector must be completed.

Fayyad added that the Palestinian Authority will continue working so that the law remains above everybody and that this is the Palestinian Authority's as well as the Palestinian President, Mahmoud Abbas's pledge, because without this vital facility we would not have an independent Palestinian state. He went on to



Prime Minister Dr. Salam Fayyad and Chief Justice Issa Abu Sharar during their tour of the Supreme Judicial Council building.

explain that the government had talked about the importance of the Judicial Institution as a protector of the rights of the people and the need to respect the provisions of the judiciary so as to spread equality among the people.

Chief justice and Head of the High Court Issa Abu Shrar praised the continued support of President Mahmoud Abbas and the Prime Minister of the Ju-

dicial Authority and their support for developing its facilities. Abu Shrar said that the judiciary is keen on supporting the independence of the Judiciary and that its keenness stems from the significance of having an independent and neutral judiciary so that it will remain impartial and just. Furthermore, the judiciary is keen to support the independence of the judges in their positions.

Palestinian Judges Convene

For three days, July 16th – 18th, 2009, the General Assembly of Palestine's Judges convened its 2nd conference under the title "Towards an Independent Judicial Authority." During the conference, members debated issues relevant to their affairs and those relevant to the Judicial Authority and its independence. This is due to the fact that the judiciary is the party responsible for guaranteeing the respect of rights, freedoms, and interests of all communities and classes of the society; additionally, the judiciary is the party authorized to guarantee the rule of law and equal treatment of all in accordance with the doctrines stipulated in the Constitution.

Four manifestations indicating the success of the conference were observed and they are as follows:

First: The high level of participation in the conference embodied in Dr. Salam Fayyad's attendance of the opening session of the conference, added to His Excellency's proclamations of support and appreciation of the Judicial Authority and his unequivocal pledge in the opening session to implement all court rulings especially those issued by the High Court. This was followed by the Supreme Judicial Council's meeting with His Excellency in which the circumstances of the Judicial Authority and its relationship with the Executive Authority were reviewed with a positive spirit and unprecedented frankness. Soon after the conference sessions, His Excellency and his venerable government started implementing issues which he proclaimed in the conference, which contributed and contributes to reinforcing the public's trust in the Judiciary and its decisions.

Second: The spirit of debate which prevailed throughout the conference, whereby the judges had the opportunity to diagnose the hindrances or the dangers which threaten the independence of the Judicial Authority. The judges expressed their opinions and their visions regarding the internal and external affairs of the Judiciary with total freedom and without any restrictions. A spirit of serious critical discussions prevailed at the expense of flattery, which in its turn reinforced the strength of the outcomes and the recommendations of the conference.

Third: The high level of organization which prevailed during the conference on the administrative and logistic levels whereby the conference was implemented without any obstacles and whereby all the needs and elements for the success of the conference were made available, had a positive impact and created an atmosphere that was favorable to the progress of the conference towards fulfilling its objectives.

Fourth: The magnitude of the media coverage of the activities of the conference whether at its opening or at the proclamation of the conclusion of its meetings were significant. A press conference was successfully held in which members of the Supreme Judicial Council, heads of the First Instance Courts and heads of the judicial departments participated actively. The press conference reflected the spirit of teamwork and collective leadership which prevail at the Judiciary.

Statement issued by the Second Conference of the Judges of Palestine in Bethlehem, July 16th – 18th, 2009.

For three days, July 16th – 18th, 2009, the General Assembly of Palestine's Judges convened its 2nd conference under the title "Towards an Independent Judicial Authority." During the conference, members debated all the issues relevant to their affairs and those relevant to the Judicial Authority and its independence. This is due to the fact that the judiciary is the party responsible for guaranteeing the respect of rights, freedoms, and interests of all communities and classes of the society; other than the fact that it is the party authorized to guarantee the rule of law and equal treatment of all in accordance with the doctrines stipulated in the Constitution.

To accomplish these goals, the Judicial Authority must be totally independent. This is what the Basic Law has stressed stipulating that "The Judicial Authority is independent and is managed by the courts with all their types..." The Basic Law also emphasized that "judges are independent with no higher authority in their judiciary than the law and that it is not permissible for any authority to interfere in the judiciary or issues relevant to justice."

Based on this, any interference with the affairs of the judiciary under the name of any political or administrative authority or through any material or virtual authority or influence in any form is not permissible. It is also not acceptable that any person or institution to interfere with the judiciary regarding any of the cases presented before it. Furthermore, any influence, whether direct or indirect to impact issued verdicts is not tolerable, so that the judges – while carrying out their duties – are subject only to their conscience and their honor, and no higher authority but that of the law.

Fulfilling the guarantee to the total independence of the Judicial Authority within the framework of cooperation with the other authorities, and fortifying it against pressure, and ensuring the impartiality and efficacy of its judges and administrative apparatuses, will not be possible without providing the material, moral and legal conditions essential to the functioning of judicial work. This is in addition to providing the necessary guarantees to execute provisions and verdicts without allowing any authority the right of interfering or influencing the conduct of the Judicial Authority or any work that the judges practice or any verdicts that they issue. Added to this, all appropriate circumstances and material and moral means which safe-guard the dignity of the judges and fortify them against any influence, should



Dr. Fayyad delivering his speech at the opening of the Judicial Conference.



Judge Issa Abu Sharar delivering his speech at the opening of the Judicial Conference.

be made available. Subsequent to this, it is necessary that all essential amendments of the relevant legislations and regulations be carried out to ensure these requirements.

The establishment of an independent efficient authority in compliance with the Basic Law emphasizing its independence is considered one of the guarantees to our Palestinian nation, besides it being an essential pillar of the many pillars keeping its standing upright and firm. It is also its sanctuary in all circumstances in that it provides justice, security and stability besides forming a shield for legal legitimacy.

We realize that the independence of the Judicial Authority is not a matter particular to the judges alone, or the Supreme Judicial Council, or its Chief; it is, however, the right of all the citizens, practiced by the judges for their safety. Any infringement of this independence is an infringement on citizens' rights, the consequences of which are dire.

The independence of the judiciary, which we are discussing, does not find support in the practices which aim to marginalize its role and deprive it of its jurisdiction and disrespect some of its legal provisions; all of this is an attempt to gain hegemony of the Judicial Authority and the powers of the Supreme Judicial Council. The talk of those who call for the restructuring of the judiciary and organizing the judicial apparatus in addition to preventing the publication of the by-laws approved by the Judicial Council and other issues in The Official Gazette, is merely a means of persisting in interfering with the affairs of the judiciary, and straying from the provisions stipulated by the Basic Law which has made firm the principle of separation between the three powers. In this context, the participants in the conference express their deep consternation and concern regarding the attempts at undermining the independence of their authority.

Added to this, are the intensive attempts of several parties and centers of power in the Executive Authority to tightly control the independence of the judiciary. However, these attempts failed thanks to the courageous defense led by the Supreme Judicial Council and its Chief, and right behind them, the General Assembly of the Judges.

At the same time, the conference emphasized the independence of the judges in their legal rulings away

from pressure and political, social and party influence. It also emphasized the necessity of working to provide the judges with all forms of security to enable them to stay just, independent and impartial, because independence is the only way to impartiality, which in its turn is the only way to fulfill justice.

In this framework, the participants debated – with a high sense of responsibility – the practical embodiment of the independence of the Judicial Authority in relevance to administrative and financial issues considering that it is the core of the independence – the existence or the lack of which is appropriate to the amount of control that the judiciary has in these matters.

The conference also stressed reinforcing the administrative authority in all issues pertaining to the judicial apparatus, and not allowing any party to interfere in this issue in order to enable the Judicial Authority to organize its administrative affairs and to ensure the provision of all the requirements of the judges and the judicial bodies to enable them to carry out their duties promptly and efficiently.

Concerning financial independence, it is difficult to talk about the independence of the Judicial Authority without going into the pressure and the influences to reach the requirements of judicial work, since financial independence is the only means enabling the Judicial Authority to act freely and to support the execution of resolutions without delay. Contrary to this, the ability of the judiciary to take decisions and implement its projects will be limited and linked to approvals and references, which might lead to a state of indecision relevant to taking and implementing these decisions which might weaken the possibility of responding to these needs and filling deficiencies. Added to this, the financial element constitutes a means through which the Executive Authority can directly interfere by not giving its approval and rationing its financial orders.

Therefore, the conference has stressed the activation of the legal provisions relevant to the budget of the Judicial Authority so as to include it as a single line item in the general budget. This would lead to enabling the Judicial Council to assume its responsibility of overseeing the implementation of its budget, its developmental schemes and its work program according to its vision and adopted strategy without obstacles. This step would enable the judiciary to develop the judicial

apparatus and to upgrade its performance, besides fulfilling its mission through a just, impartial judiciary to achieve justice, impartiality, independence and efficiency.

Based on this, and aiming to guarantee the independence of the Judicial Authority, the conference has demanded that The Supreme Judicial Council work to achieve the following:

Legislative Recommendations:

1. Review the Judicial Authority Law, to help lead to its independence and placing it at an equal level with the legislative and the executive authorities, hence banning those two authorities to interfere in judicial affairs, its jurisdiction and deprive it of its authority.

2. Reiterate the right of the Supreme Judicial Council to propose laws that are related to the affairs of the judiciary, and to express its opinion on any relevant drafted laws. In this context, work on:

- Amending the Judicial Authority Law
- Amending the Court Formation Law
- Amending the Penal Procedures Law
- Amending the Civil and Commercial Court Hearings Law
- Adopting the law of general pardon (amnesty)

3. Work on amending the Judicial Institute Law, and to nullify the presidential decree which conflicts with this law and hinders the launching of this institute.

4. Work on amending Article (34) of the Judicial Authority Law by increasing the retirement age of the High Court judges to 74 years. This is in reiteration of the memorandum raised by the judges based on the situation of the judges of the High Court in Gaza, where 6 of the High Court judges will retire during 2010, which will create a malfunction that will be difficult to rectify. The Public Commission has approved the memorandum and has raised it to his Excellency the President through the President's Office, and to the Prime Minister through the Secretary General of the Council of Ministers.

5. Identify the legal procedures that will allow early retirement for judges who are unfit to develop the judicial scale.

Recommendations for the Executive Authority

1. See to it that the independence of the judiciary is protected as stipulated by the various articles of the Palestinian Basic Law, which ban and incriminate any interference into its affairs or any attempts to influence the verdicts of judges in any way and by any party.

Second Judicial Conference

2. Reiterate that refraining from enforcing judicial rulings is not only a violation of the law and a punishable crime according to the law, but is also an uncivilized act that violates the independence of the judiciary and undermines its integrity.

3. Emphasize that all court staff are subject to the Supreme Judicial Council, and that the SJC supervises all issues relevant to their administrative and financial affairs.

4. Work on defining the reference authority of the Attorney General according to the laws regulating this matter.

5. Work on establishing a committee specialized in the cases related to the state, and an administrative prosecution office with jurisdiction under the authority of the Ministry of Justice.

6. Provide protection and maintain security for the courts and the judges from any assaults.

7. Work on approving the requested modifications for the Judicial Authority in accordance with an annex to the budget.

8. Amend transportation allowances for the judges to match the rest of the public sector staff.

9. Approve the appointments for all job vacancies.

10. Work on including the budget of the Judicial Authority as a single line item, according to the law, in the general state budget.

Recommendations to the Supreme Judicial Council and the judges themselves:

1. Establish the concept of independence of the judiciary as a value and belief in which the judges believe that enabling themselves to stand up to any assaults on independence, since it is the basic entry towards achieving justice and guaranteeing rights and freedoms, which judges are working on achieving.

2. Emphasize the neutrality of judges as one of the elements of independence, where their main task becomes limited to applying the law, and achieving and maintaining justice in the society.

3. Continue the construction of the court compounds in all districts in a modernized way that can provide an appropriate environment for litigation and for empowering the integrity of the judiciary.

4. Rent premises for the Judicial Institute that will guarantee the basic needs of judicial training until an ideal Judicial Institute is constructed.

5. Work on establishing a Judges' Club to achieve its anticipated goals for the honorable judges and their families.

6. Work on reinforcing the faith of the public and their leaders, institutions and civil society organizations in the significance of the independence of the judiciary as a guarantee for them in safe-guarding their rights and freedoms and keeping them from being violated.

Speech of Chief Justice, Judge Issa Abu Sharar

His Excellency, Prime Minister, Dr. Salam Fayyad,

Ladies and Gentlemen, Honorable Judges...

Welcome and thank you for your participation in the second conference of Palestine's judges convening in the city of Bethlehem from July 16, 2009 until July 18 2009 under the theme "Towards an Independent Judicial Authority." In this con-



Chief Justice and the judges during the press conference at the conclusion of the Judicial Conference.

ference we are going to review the real meaning of the independence of the Judicial Authority and the philosophy upon which it is based. Further, we are going to address the challenges that will confront the Judicial Authority during the next judicial year in order to increase its prestige and reinforce its independence.

Honorable judges, the Respectable Assembly:

First we have to mention that our second conference convenes without the participation of our dear brethren, members of the judicial council in the Gaza Strip. These judges could not participate due to the difficult circumstances imposed upon the strip with their rights confiscated and their independence assaulted due to the political division. We look forward to a day when this gloom will be removed and the reasons leading to the seizure of judicial power in the courts of the Gaza Strip will be eliminated. On this occasion, allow me to salute your colleagues in the Gaza Strip, looking forward to the day when the Third Judicial Conference will convene with their participation.

Honorable judges, the Respectable Assembly:

On the occasion of the close of the judicial year, we can but praise your accomplishments during the year. These accomplishments have been fulfilled as a result of your hard work and the huge efforts which you have exerted to overcome the obstacles which have led to the accumulation of cases before the courts. Thanks to your efforts we were able to bring about a break-through in regards to the problem of the judicial backlog which seemed difficult and almost impossible to solve. Allow me to review with you the accomplishments of the Judicial Authority concerning the accumulated cases, and to shed light on the cases that appear before the courts and those resolved, and the percentage of increase and the percentage of resolution. We compared the work of the courts during the past six months of 2009 with its work during the same period in 2008. The comparison showed that case dispositions in the criminal Conciliation Court increased in 2009 by a percentage of 156% in comparison to 2008, while case dispositions increased in the criminal cases in the First Instance Courts by 263%.

Honorable judges, the Respectable Assembly:

As a judicial body and as the Supreme Judicial Council, we salute and express our gratitude to President, Mahmoud Abbas, Head of the Palestinian Authority, and his Excellency, Prime Minister Salam Fayyad for their support of the Judicial Authority and their concern for its independence and their affirmation of the rule of law. This is in addition to their support which provided the mate-

rial circumstances which helped us to develop the Judiciary and modernize the infrastructure and to provide the best services to the public. We especially appreciate their affirmation of the obligation to execute all court verdicts. In this context, we cannot help but praise the directives issued by His Excellency, the Prime Minister in which he asks that the ministries and the Authority departments to make all efforts to execute court verdicts promptly.

Honorable judges, the Respectable Assembly:

We pointed out on Palestinian Judiciary Day that Article 97 of the Palestinian Basic Law clearly states that "the Palestinian Judiciary is an independent authority," standing on an equal footing with the Executive and Legislative authorities in Palestine. This forbids any interference from these two powers in judicial affairs, obstruction of judicial independence or violation of the judiciary's jurisdiction over the courts. Nevertheless, notwithstanding this explicit statement, some parties continue to refuse to recognize this independence and endeavor to circumvent all provisions stated in the Basic Law. They continue to infringe upon this independence under different claims. Sometimes they claim that the provisions are ambiguous, and at other times they compare the situation to that in the other neighboring Arab countries. They intentionally forget that the judges in neighboring countries are struggling to reinforce their independence and are raising their voices to demand an amendment of the legislative provisions which impede their independence.

Honorable judges, the Respectable Assembly:

Since this conference convenes under the theme "Towards an Independent Judiciary," it is with the aim of reinforcing the independence of the Judiciary as an authority that we have to affirm the following matters:

1. It is the independence of the Judiciary, as one of the three state authorities standing on an equal footing with both the executive and legislative branches, which gives the independence of the Judiciary its real meaning. This prevents the Judicial Authority from being considered a public utility providing services to the public, since viewing the Judiciary as an independent authority constitutes a basic guarantee of rights and public freedoms.

2. The most significant element of the independence of the Judiciary is impartiality. The impartiality of the Judiciary means moving away from favoritism towards one party over the other. It also means moving away from affiliations and political inclination. Moreover, impartiality on the part of the judiciary would

strip it of its independence.

3. If the Judiciary is independent as an authority then judges are independent as individuals while carrying out their judicial tasks. Also, the independence of the Judiciary as an authority means that the judge is not only an employee but a member of an independent authority.

Honorable judges, the Respectable Assembly:

The self confidence of judges in the concept of judicial independence is one of the most significant elements supporting the independence of the Judiciary as an authority and the independence of judges as individuals. It is therefore essential to emphasize that judges must be confident in their belief in their independence. Judges need to deepen their confidence in this belief and make independence a live conviction and part of their faith. The judge should have confidence in his belief in judicial independence. He shouldn't consider judicial independence merely a feeling or a disputable ethical obligation.

To affirm the self confidence of judges in the independence of the Judiciary, it is essential to have a clear philosophy for the principle of independence in which the judge believes and which is instilled in his conscience. The judge should know the extent of the significance of the independence of the Judiciary to fulfill justice and to safeguard the rights and public freedoms. The judges' awareness and their understanding of the necessity of this independence must be reinforced to bring about justice and a guarantee of the freedom for the Palestinian people, which is the core task they had vowed to fulfill.

The independence of the Judiciary cannot exist for judges who do not know the meaning of independence or do not have a clear concept of it, and do not have an explicit understanding concerning the effect of interference in their affairs. Therefore, judges' awareness of the necessity of this independence should be strengthened, rendering it a vibrant, defendable value.

Honorable judges, the Respectable Assembly:

The Supreme Judicial Council stands as a shield protecting the independence of the Judiciary and safeguarding its integrity and has felt that the independence of the judiciary is in danger and that there are grave attempts to undermine it and empty it of the philosophy upon which it is based. Therefore, we present this matter for debate in this conference. We have found that the matter necessitates the presentation of the threats that endanger the independence of the Judiciary before you in order to identify the tools that enable us to protect this independence and defend it.

Honorable judges, the Respectable Assembly:

We in the Supreme Judicial Council, having observed the attempts of some to undermine the independence of the Judiciary and to empty the essence of its content, find that the independence of judges in issuing their verdicts is in need of support and guarantees to reinforce it. This does not come about unless the Judicial Authority has financial and administrative independence and Article 3 of the Judicial Authority Law is not sufficient to fulfill its need for financial independence. To realize this independence, the inclusion of all revenues and expenditure has to be taken into consideration in the preparation of the draft budget. In addition, the budget draft has to be presented to the Ministry of Finance after the Supreme Judicial Council has prepared it in agreement with the Minister of Finance.

We in the Supreme Judicial Council do not accept the separation of the Judicial Authority's administrative apparatus from the courts and will not agree to the subordination of the Judiciary support system to the Executive Authority since the separation between them undermines the independence of the Judiciary and opens the door wide for the Executive Authority to interfere with the works of the Judicial Authority. Any attempt of this type will not be in accordance with what is stated in Article 97 of the Palestinian Basic Law, which has affirmed the independence of the Judiciary as an authority.

Honorable judges, the Respectable Assembly:

On this occasion, we cannot but raise our voices and tell those who try to rescind the independence of the Judicial Authority, or try to put it under a mandate under any name ... whether it is the Transitional Judicial Council, or a steering committee... we hereby tell them that the Palestinian Judiciary has come of age and that it does not need guardians anymore. It is essential to say that we reject all forms of mandates and interference, and that we will not go backwards or accept withdrawal to a previous starting point.

Honorable judges, the Respectable Assembly:

On June 28, 2009, we participated in a televised program put on by the Independent Commission for Citizens' rights. The program's topic was "The Challenges facing the Palestinian Judiciary during the coming years." Among those who participated were the heads of committees in the Legislative Council and heads of civil society organizations other than academics. One of the intensely debated topics was the partiality of the Judiciary and its integrity. The prevailing opinion in that program was that the Palestinian Judiciary lacked integrity. In this context, we find that the most serious threat to justice in any state is "the collapse of the integrity of the Judiciary," since respect for the Judiciary and its integrity stem from trust in its verdicts.

When court verdicts in any society are subject to public mocking, criticism and vilification, this means that this society has not yet reached maturity and is an uncivilized society. Complaints about court verdicts and the slandering of these verdicts are considered a breach of the Doctrine of Authentic Provisions, which is the backbone of judicial systems in modern states. Added to that, respect for the Judicial Authority and its provisions gives a semblance of civilization, since it is civilized nations that respect their judicial apparatus and hold sacred its provisions.

One of the shortcomings of the Judiciary brought up in the program which convened in the Independent Commission was the phenomenon of 'paralysis'

and 'blocs' inside the Judiciary. These "blocs" try to gain power with some elements of the Executive Authority and use them to interfere with the Judicial Authority and undermine judicial independence. Such conduct is shameful and destructive. This phenomenon must be firmly confronted because personal aspirations should never be at the expense of the independence of the Judiciary and justice and should not be the goal for any judge. The judge should not be a party to the struggle for power and the attainment of positions at the expense of the independence of the Judiciary. In addition, banding together weakens judges and stands in the way as an obstacle to justice undermining the integrity of the Judiciary and reducing the trust of the public in its judicial apparatus.

Honorable judges, the Respectable Assembly:

We have named this conference, "Towards an Independent Judicial Authority," because the independence of the Judiciary is a sacred doctrine stemming from the elevated position of the Judiciary in civilized societies. Added to that, the independence of the Judiciary is a fundamental guarantee of "justice and public freedom." Protecting the independence of the Judiciary and its impartiality, preventing people trifling with its affairs and securing the dignity of its personnel, are the only elements which establish for justice a steadfast proud monument towering above all.

A ruling system that does not recognize the independence of the Judiciary is a weak system of governance that does not bear the elements of survival. The greatness of any authority is in the power of justice it creates. If a nation loses the independence of its Judiciary, it loses everything.

Therefore, an independent Judiciary is the strongest guarantee of being able to achieve justice. It is also the most competent tool for safe-guarding state institutions, fending off oppression and tyranny, eliminating grievances and safe-guarding public freedom and the rights of individuals. Therefore, if the Judiciary does not enjoy independence, there will be no justice, because justice always goes hand in hand with the independence of the Judiciary.

Honorable judges, the Respectable Assembly:

The current Supreme Judicial Council has carried out its duty to improve the Judicial Authority according to a national agenda and it has brought about accomplishments that you can be proud of. Consequently, the public's trust in the Palestinian Judiciary has grown stronger. Along with this, the Council has carried out its duty in upholding your independence.

Due to the fact that my judicial mandate is drawing to an end, the biggest challenge to the Judicial Authority is to prove to everybody that its independence and the independence of each one of you is not linked with the Chief Justice, but that it should be a firm principle instilled in your conscious, and a faith that has taken root in your conscience.

Finally, I will repeat what we have previously said on many occasions. The Supreme Judicial Council proposed draft judicial laws in accordance with the powers

vested in it by the Palestinian Basic Law, Article 100. These laws are necessary for the development of the Judiciary and the justice sector and should be approved.

Moreover, several articles of the Judicial Authority Law need to be reconsidered in order to expand the Supreme Judicial Council. It is also essential to review the quorum of the council's convening, and define the organizational tools for the appointment of the Head of the Supreme Court and the special conditions for the occupation of this position. We see that this appointment should be subject to what is stipulated in Article 18 of the Judicial Authority Law, meaning that the appointment of the Head of the Supreme Court is carried out on the basis of placement of the Supreme Judicial Council, since the occupation of the Head of the Supreme Court is one of judicial occupations stipulated in that article.

A review of the payment scale for judges and their salaries has to be carried out. Relevant to this matter, we have sent a memo to His Excellency, the Prime Minister, requesting the formation of a committee composed of judges and the Ministry of Finance to prepare a proposition to review the current salary scale.

Honorable judges, the Respectable Assembly:

The Supreme Judicial Council, in order to institutionalize its work and develop its administration, has drafted a combination of by-laws within its constitutional right as stipulated in Article 80 from the Palestinian Judicial Authority Law. However, we were surprised that someone instructed the Chief of Advisory Opinion and Legislation Bureau not to publish these laws on the pretext that they are illegal, in spite of the fact that the declaration of any law as "illegal" can only be decreed by a judiciary party within the mechanisms stipulated by the law. This impediment as a whole constitutes a violation of the independence of the judicial system and an obstacle to the development of its work. From our side, we look toward the correction of this distorted situation, which is not in line with maintaining the rule of law and the independence of the judiciary.

It is also necessary to review the legal tools governing the Palestinian Judicial Institute in order to bring it back to the judicial arena. The Palestinian Judicial Institute has a judiciary interest in the first place, and hence should be under judicial supervision in order to rise, because currently it is a corpse. Hence, reviewing the legal tools governing it will revive it, and the judiciary system will be able to launch it exactly as it has been able to take off with several of its judicial institutions and administrative bodies.

From this platform, we also call upon all the concerned parties to develop the legal tools necessary to represent the Palestinian National Authority in front of the law through the establishment of a specialized administrative prosecution body. This specialized prosecution body would act to handle criminal and civil cases filed against the state following the Egyptian and the Jordanian models. Just as important, we also add our voice to all parties requesting identification of the authority housing the specialized body which

will contribute to the development of its performance and clarify the authority responsible for it. There is no doubt that developing the performance of the general prosecution lies in the interest of the justice and the judiciary system.

I thank you for participating in this conference, and we thank all those who contributed to its organization in particular the Netham Rule of Law Project, funded by USAID, Mr. Nabil Iseifan, for his efforts, and the project's efforts in supporting the Judicial Authority.

Peace be upon you and the mercy and the blessings of God.

The Speech of the Prime Minister Dr. Salam Fayyad

Your Excellency, the Honorable Judge Issa Abu Sharar, Head of the Supreme Court, Chief of the Supreme Judicial Council, the Honorable Members of the Supreme Judicial Council

Ladies and Gentlemen, Members of the Judges General Assembly Ladies and Gentlemen,

I am honored to participate with you today in the plenary meeting of the Judges' General Assembly and the 2nd Conference of Judges which comes at a time where we are starting to witness progress in the Palestinian Judiciary Authority, with increased public confidence of the citizens in the courts and the justice system. Public confidence is a vital contributing factor to effective enforcement of the rule of law and lays the foundations of justice in Palestinian society.

Ladies and Gentlemen, Honorable judges:

Our participation with the judiciary Authority in the Second Judges Conference stems from our continued support to the judicial system, and our deep belief in the doctrine of separation of powers between authorities. The separation of powers guarantees balance among the authorities and contributes to the achievement of equality, justice and security for the citizens and the protection of their rights, freedoms and property.

Supporting independence of the Judiciary, and the role that the Executive Authority can play in this area, constitutes one of the fundamental pillars of the government's plans for the National Authority. I would also like to reiterate that the National Authority is determined to continue its support for the Palestinian judiciary system and its infrastructure with all available means and resources, and to eliminate all obstacles impeding cooperation between the Executive Authority and the Judicial Authority, which will ensure the integrity and independence of the Judiciary system. This objective can never be achieved anywhere in the world if the three authorities do not cooperate together. The Judicial system cannot be effective and justice will not be served if the Executive Authority is not carrying out its duty in achieving secu-



Judicial Conference.

ity, and enforcing the rule of law and public order. The Executive Authority continuously seeks to perform its duty as a matter of responsibility and not as a favor to anybody. This is what citizens themselves are starting to sense and are seeing the results.

The Executive Authority has instructed all the heads of the security departments, including the police, to abide by all warrants and judicial verdicts, including requests to appear in front of the court when asked as prosecution witnesses. Adherence to judicial verdicts and warrants has a positive impact on the effectiveness of criminal cases and the achievement of timely disposition of cases. Beyond a doubt, judges have been the first to feel the positive impact of the role that the Palestinian police are playing in carrying out the court verdicts and warrants. The Council of Ministers has also instructed all governmental departments that court verdicts are final, and abiding by those verdicts is not negotiable matter.

We are glad that some of our fellow judges from the Gaza Strip are attending this conference. We hope that the day will come when the unity of our nation and its institutions is achieved and the division is over so that the courts in the Gaza Strip can go back to operating under the jurisdiction of the Supreme Judicial Council, as it is stated in the constitution and in the laws of the Judicial Council as it is stated in the constitution and in the laws of the Judicial Authority. It is not acceptable that the Supreme Judicial Authority and the courts are illegally taken over as this is an outrageous violation of the law.

We salute the judges of the Gaza Strip both those participating in this conference and those who were not able to come. We realize that they are also not even able to go to their courts to carry out their jobs. We assure you of the preparedness of the Palestinian National Authority and all its institutions for an immediate comprehensive rehabilitation program for the courts in the Gaza Strip in addition to providing them with the needed resources to do their jobs the minute these courts are back under the jurisdiction of the Supreme Judicial Council.

Ladies and Gentlemen, Honorable judges:

I would like to assure you, at the Second Judicial Conference, of the commitment of the Palestinian National Authority and its institutions to empowering the status of the Judicial Authority and enabling it to carry its duties and responsibilities in an effective and professional manner, and to providing justice to the citizens, and restoring integrity to the National Authority and its institutions.

In this area, we have given, and are still giving, the development of the Judicial Authority top priority. This stems from our deep belief that it is the primary element in applying the rule of law and in maintaining stability, security and public order. The judicial sector is one of the most influential sectors in the lives of citizens. Through

its professional performance, the Palestinian National Authority gains the trust and appreciation of its population and most importantly, empowers the people's trust in our future and our national program and ability to establish an independent state.

We view with respect all the achievements of the Palestinian Judicial Authority, represented by the Supreme Judicial Council led by the Honorable judge Isaa Abu Sharar, Head of the Council. There have been great achievements by the SJC this year such as the increase in the number of cases disposed in the courts, and the building and renovation of several courthouses. There is still a lot of work ahead of us until we achieve a state that is governed fully by the rule of law through the separation of powers; a state that will provide stability and prosperity for our citizens and will constitute an element of stability in the region.

Our appreciation and support for the work of the Judicial Authority is not only in theory but financial as well. This is represented by the provision of all possible financial support to the Judicial Authority. And this is what we have persistently worked on during the last two years. Any requests from the Judicial Authority were always responded to whenever that was possible.

Ladies and Gentlemen, Honorable judges:

We have worked this last year to secure the financial requests of the Judicial Authority to cover existing deficits, whether this was in staffing or management. I hope that these new appointments have helped the Judicial Authority to fulfill its duty and effectively handle the thousands of cases it annually receives, and to reach to verdicts into thousands of cases it annually receives, and to efficiently dispose of the thousands of cases remaining from previous years. We hope that we will be able to provide further support, reaching to the point where the Judicial Authority can fill all staff positions and remedy all its financial deficits. As an example, the government has approved the allocation land in order to build new courthouses, and I would like to assure you that we will not spare any effort in this field or any other in order to promote the judicial sector and achieve justice and the rule of law.

Ladies and Gentlemen, Honorable judges:

In the end, I wish you total success in your conference. I hope that the outcome of the conference is a renewed vision that will contribute to the establishment and enhancement of the achievements of the Judicial Authority. This will in turn contribute to achieving the vision of the Palestinian National Authority of completing the preparations for building the Palestinian State during the coming two years to be a state of law and order, which will afford our citizens prosperity and general wellbeing.

Thank you. Peace be upon you and God's mercy and blessings.



photo from the Judicial Conference.

Formation of Regular Courts for 2009 – 2010 in Accordance with the Decision of the Chief Justice issued September 3rd, 2009.

Formation of the Ramallah First Instance Court is as follows:

1. Judge Ashraf Urayqat- Head
2. Judge Ghassan Arrisheh - Member
3. Judge Hussein Ubeidat - Member
4. Judge Abed Al-Fatah Al-Jibrini - Member
5. Judge Awatef Abed Al-Ghani - Member
6. Judge Raed Asfour - Member
7. Judge Dawood Dir'awi - Member
8. Judge Fadl Najajra - Member
9. Judge Mohammad Abu Sundus Assigned Judge
10. Judge Sa'd Sweiti - Assigned Judge
11. Judge Anton Abu Jabir Assigned Judge

Formation of the Nablus First Instance Court is as follows:

1. Judge Abed Al-Karim Haddon - Head
2. Judge Saed Al-Hamdallah - Member
3. Judge Kifah Al-Shouli - Member
4. Judge Mahmoud Al-Jabsheh - Member
5. Judge Kamal Jaber - Member
6. Judge Manal Al-Masri - Assigned Judge
7. Judge Shaher Nazzal - Assigned Judge
8. Judge Nizar Hijji - Assigned Judge
9. Judge Lu'ay Hamarshah - Assigned Judge
10. Judge Abed Al-Jawwad Mara'bah Assigned Judge

Formation of the Hebron First Instance Court is as follows:

1. Judge Hazim Dkeidek - Head
2. Judge Fawwaz Attieh - Member
3. Judge Iyad Tayyem - Member
4. Judge Awni Al-Barbarawi - Member
5. Judge Rashid Arafah - Member
6. Judge Maher Zahaykeh - Member
7. Judge Yamin Jarrad - Assigned Judge in addition to her job

Formation of the Bethlehem First Instance Court is as follows:

1. Judge Imad Maswadeh - Head
2. Judge Mohammad Ihsheish - Member
3. Judge Ahmad Attoubasi - Member
4. Judge Abed Al-Hamid Al- Ayyoubi - Member
5. Judge Mousa Shakarneh - Member
6. Judge Walid Abu Mayyaleh - Assigned Judge
7. Judge Riyad Amr - Assigned Judge
8. Judge Muhammad Al-Ardah - Assigned Judge

Formation of the Jericho First Instance Court is as follows:

1. Judge Mohammad Salameh - Head
2. Judge Abed Al-Latif Al-Ayed - Member
3. Judge Arlett Haron - Member

Formation of the Jenin First Instance Court is as follows:

1. Judge Mohammad Abu Jamous - Head
2. Judge Amjad Lubbadah - Member
3. Judge Khalid Abu Khadijeh- Member
4. Judge Bashar Nimr - Member
5. Judge Amneh Hamarshah - Member
6. Judge Zahi Salim - Assigned Judge

Formation of the TulKarem First Instance Court is as follows:

1. Judge Bassam Hijjawi - Head
2. Judge Usamah Al-Kilani - Member
3. Judge Thaer Al-Umari - Member
4. Judge Ma'moun Kalash - Member
5. Judge Huda Miri' - Assigned Judge
6. Judge Raed Assaf - Assigned Judge
7. Judge Wisam Badaro - Assigned Judge

Formation of the Qalqilyah First Instance Court is as follows:

1. Judge Farid Aqel - Head
2. Judge Abd Al-Karim Halawah - Member
3. Judge Mamdouh A'laiyyan - Member

The Ramallah Court of Appeal is composed of the following judges:

1. Judge Adnan Ashu'aybi - Head
2. Judge Yusif Al-Salibi - Member
3. Judge Mohammad Al-Omar - Member
4. Judge Raed Abd Al-Hamid - Member
5. Judge Tal'at Attawil - Assigned Judge
6. Judge Mohammad Al-Haj Yassin - Assigned Judge
7. Judge Mohammad Muslim - Assigned Judge

The Jerusalem Court of Appeal is composed of the following judges:

1. Judge Hani Annatour - Head
2. Judge Hilmi Al-Kakhin - Member
3. Judge Raslan Arafat - Member
4. Judge Issam Al-Ansari - Assigned Judge
5. Judge Thurayya Al-Wazir - Assigned Judge
6. Judge Paulette Mitri - Assigned Judge in addition to her job
7. Judge Rasha Hammad - Assigned Judge

Formation of the Ramallah Conciliation Court is as follows:

Criminal Department:

1. Judge Ruba Attawil
2. Judge Saleh jaffal
3. Judge Raed Zeidat
4. Judge Fatin Sayf

Civil Department:

1. Judge Samer An-Namari
2. Judge Falastin Abu Rumi
3. Judge Mayy Abu Shanab
4. Judge Halah Mansur

Formation of the Nablus Conciliation Court is as follows:

Criminal Department:

1. Judge Wissam Asad Salaymah
2. Judge Mohammad Ayyad Al-Ajlouni
3. Judge Dalal Al-Mashni
4. Judge Mohammad Dawood
5. Judge Qasem Zyab

Civil department

1. Judge Ahmad Wild Ali
2. Judge Saed Al-Uweivi
3. Judge Nida' Jarrar
4. Judge Zuheir Abu Thaheer

Formation of the Hebron Conciliation Court is as follows:

Criminal Department

1. Judge Hamadah Barahmah
 2. Judge Imad Ash-Abani
- ##### Civil Department:
1. Judge As'ad Al-Dahdouh
 2. Judge Yasmin Jrad

Formation of the Bethlehem Conciliation Court is as follows:

Criminal Department:

1. Judge Munther Da'na
2. Judge Jamal Jaber
3. Judge Muhammad Al-Ardah
4. Judge Shadi Hushieh

Civil Department:

1. Judge Ammar An-Nammoura
2. Judge Saed Ghanim

Formation of the Jenin Conciliation Court is as follows:

Criminal Department:

1. Judge Sultan Issa
2. Judge Ayman Saleh
3. Judge Hasan Darawshah

Civil department:

1. Judge Bilal Darwish
2. Judge Ayman A'leivi

Formation of the TulKarem Conciliation Court is as follows:

1. Judge Bialal Abu Ar-Rub
2. Judge Ammar Faza'

Formation of the Qalqilyah Conciliation Court is as follows:

1. Judge Raed Al-Ubwah
2. Judge Musleh Abu Arram
3. Judge Amjad Arafat

Formation of the Dura Conciliation Court is as follows:

Criminal Department

1. Judge Musa Saya'reh
2. Judge Adel Abu Saleh

Civil Department

- Judge Firas Maswadeh

Formation of the Halhul Conciliation Court is as follows:

- Judge Issa Ijbur

Formation of the Jericho Conciliation Court is as follows:

- ##### Criminal Department:
- Judge Jamal Shdid

Civil Department:

- Judge Basem Al-Khasib

Formation of the Salfit Conciliation Court is as follows:

- Judge Fu'ad Abu Bakr

Formation of the Tubas Conciliation Court is as follows:

- Judge Khalid Yassin

Formation of the Department of Judicial Inspection is as follows:

1. Judge Azmi Tanjir - Head
2. Judge Taysir Abu Zaher - Inspector
3. Judge Nassar Mansur - Inspector

Eleven Conciliation Judges take the Oath of Office before the Chief Justice and Members of the Supreme Judicial Council



New Conciliation Court judges with the Chief Justice and members of the Supreme Judicial Council.

Eleven Conciliation Court judges were sworn in before the Chief Justice and Members of the Supreme Judicial Council at the Council headquarters in Al-Bireh, July 29, 2009. The judges were sworn in after having completed a period of intensive training that lasted several months. They were appointed in accordance with a decision by President Mahmoud Abbas on March 26th, 2009 upon the recommendation of the Supreme Judicial Council. The judges' names are: Majid Abd Al-Karim Mahmoud Al-Masharqa, Fahmi Mufid Mohammad Abd- AlQader Zeid, Amer Mamdouh Hamed Mamash, Wissam Mohammad Jawdat Salim, Mohammad Jamil Ya'qoub Ismail, Ahmad Farid Abd Al-Karim Hannoun, Bashir Awad Mohammad Suleiman, Abd Al-Malek Salamah Abd Al-Malik Smoudi, Mohammad Abd Ar-Rahman Mohammad Hantouli, and Sha-

di Hussein Mahmoud Al-Jamal.

In his speech to the newly appointed judges, Head of the High Court and Chief Justice Issa Abu Sharar asserted that the judicial work was not easy and that the most important thing about it is for the judges to have self-confidence and the ability to develop their competence and potentials in addition to exercising judicial values. He stated, "Despite our continuous concern for developing the competence of judges through workshops and training programs, this however should be accompanied by the judges' will to develop themselves. He added that neutrality and impartiality are two fundamental requirements to bring about justice.

Abu Sharar expressed hope that judges could acquire new skills from their former colleagues. He made it clear that judges should not expect to be appointed in their places of residence since putting a distance between the

judges' place of work and their place of residence reinforces the impartiality of the judiciary. Abu Sharar pointed out that during the next week the Judicial Training Department at the Supreme Judicial Council would evaluate the needs of the eleven judges for additional training.

It should be mentioned that the appointment of judges is conducted through a judicial contest that is advertised in newspapers. The Supreme justice Council sets up a committee to conduct the contest and to match applications with the publicized work requirements. After this, the contestants are subjected to a written examination followed by an oral examination until the contestants reach the interview stage and then followed by selection of the judges who satisfied the conditions. The selected judges then undergo a training course for a period of time that is not less than three to four months.

The Supreme Judicial Council opens the Door to a Competition for the Selection of Delegates to the Jordanian Judicial Institute

The Supreme Judicial Council opens the door to a competition that it has announced to select ten delegates who will be sent to the Jordanian Judicial Institute for two years to be appointed Conciliation Court judges in accordance with the followed laws.

The Supreme judicial Council has made it a condition that the common conditions stipulated in Article (16) of the Judicial Authority apply to the applicants, that their ages do not exceed 35 on the date of the announcement of the competition, that their averages in the Secondary School Certificate or its equivalent are not less than 70%, that they have obtained their first university degree in law with

a minimum average of 'good' from one of the law colleges in the Palestinian universities or a law certificate from one of the law colleges in the other universities on condition that they were regular students and that this certificate is acceptable for appointment in the judiciary in the country in which it was issued.

Competitors should have a minimum experience of a year as practicing lawyers, or they should be among the top ten in the year that they graduated, or they should pass the scheduled competition the date of which will be announced later after applications have been accepted. Those lawyers accepted for studying in the institute shall

remove their names from the records of practicing lawyers.

In accordance with what the Supreme Judicial Council has announced, applicants who pass the competition shall be paid a monthly sum that includes all travel and training fees and expenditure. The delegates shall be committed to submit a Notary Public guarantee for the value of \$50,000 for the benefit of the public treasury, and to sign an obligation at the Notary Public to be committed to training as required. Upon termination of studying and success in the final examination at the Institute, applicants shall be appointed as Conciliation judges at the Supreme Judicial Council in accordance with the procedures.

Terms Contained in Palestinian laws and their interpretation



**By: Judge Mazin Sesalim
High Court Justice**

Defining Interpretation:

Interpretation is to determine the meaning behind the text phrases intended by the legislature. Every legal provision needs to be interpreted in order to make it suitable for application to the facts of life. Thus interpretation is to search for a meaning intended by the legislature using certain terms which compose the legal text and that is why it requires the analysis of such terms and words in order to reveal its meaning. The goal behind interpretation is to make the legal text (provision) suitable for application on the facts presented before the Judiciary.

Types of Interpretations:

There are many theories and schools which deal with the interpretation of legal texts. There is the "Commentary on the Texts" school and the "Social Aim" school ... etc. Each school has its own point of view in this regard, but we can safely say that there are three major types of law interpretation: The Legislative Interpretation, which is conducted by the legislature and takes the form of legal texts directed to interpret other legal texts the legislator believes it needs more clarification. The Judicial Interpretation, which is conducted by the judge who presides over the case and aims to apply the law of the facts of the case. The Jurisprudential Interpretation, which is conducted and issued by a legal scholar in order to help the judge in interpreting the legal text and directing the legislature to complete any shortcomings that might be in the text.

We will limit our discussion here to the Legislative Interpretation which was adopted by the Palestinian laws issued during the mandate era, where each law contained an article the aim of which is to give the intended meaning of phrases, words and expressions used in the law. Such articles start with the following phrase "the following expression and phrases stated in this law shall have the meaning given to it in this article unless the text provides otherwise." The article then lists each phrase, word or expression and the meaning given to it by the legislator. The legislator during that era went further than this by allocating an entire law for the sole purpose of providing the meaning and interpretations to the used legal phrases and words. Such law was known as the Interpretation Law number (9) of 1945, where article (2) of this law states "the following phrases and expressions stated in this law or in any other applicable laws or other laws that might come into force in the future, shall have the mean-

ing allocated to it in this law, unless the subject or evidence indicates otherwise or if there is an explicit text that provides other meaning."

Our Palestinian legislature followed the same path where most laws issued by the Palestinian National Authority include an article "usually the first one" which states the meanings allocated to the phrases and expressions contained in the law. The importance of such an interpretation is its obligatory nature because it constitutes a legal provision and gives clear meanings to the laws legal text which leads to its correct and safe application.

In order to better serve legal professionals and other interested individuals and in order to enrich the legal knowledge and culture, we decided to provide the interpretations of the legal terms and phrases contained in the Palestinian Penal Code number (74) of 1936 and its amendments and those terms contained in the Interpretation Law. These two laws are still applicable in the southern districts of Palestine. Such an effort might benefit officials in both the Public Prosecution and the police who carry out investigations, so that they will be able to precisely apply the relevant legal rules on the facts of the cases they handle.

The Crime:

The phrase "crime" means the action or omission which requires the imposition of the punishment prescribed by law.

Felonies, Misdemeanors, and Fractions:

A felony "is the criminal act which requires the punishment of its perpetrator by death or imprisonment for a period which exceeds three years without the need to prove that the perpetrator was previously convicted.

An infraction "is any criminal act which requires the punishment of its perpetrator by imprisonment for a period which does not exceed one week or the criminal act which requires the punishment of its perpetrator by a fine that does not exceed five bounds if the criminal act requires only a fine punishment.

A misdemeanor "is any criminal act which does not constitute a felony or an infraction"

A Dwelling:

The term "dwelling" includes any building or any part of a building the owner or the occupant took as a place of living for him/herself or his/her family even if such a building was not occupied by residence consistently. Any building or structure attached or adjacent to the place of residence shall

be considered as a part of the place of residence provided there is a direct connection of the two structures or they were connected through a roofed passageway which leads from one structure to the other. Any building or structure which does not fulfill this condition shall not be considered as a part of the place of residence.

The Night or at Night:

The terms "Night" or "At Night" means the period of time between 6:30 pm and 6:30 am.

Great Bodily Harm:

The harm which reaches dangerous degrees and causes great or permanent injury to the body or injury which might cause physical harm or might mutilate any part of the internal or external body or the mutilation of body tissues or harming any of the human senses permanently or causing a great or permanent damage to any such senses.

Wound:

Any crack or spare caused to one of the external bodily tissues. The tissue is considered to be external if it could be touched without the need to crack or injure any other tissue.

A Person or an Owner:

The term " Person or Owner " and other similar terms includes when used in relation to the properties of judicial bodies and it also means any group of people which can own properties, it also means His Majesty the King when it is so used.

Public or Crowd :

The term " Public " or " Crowd " includes all the residents of Palestine and it also includes any group of people who use or live in a special place or any number of them or any undefined people who might be included in the act which the term is used in relation to it.

Public Road:

The term Public Road "includes any public road or market or square or street or bridge that is legally used by people.

Public Place:

The term Public Place "includes a public road or building or place or passage way which people have the right to use and enter or they are allowed to enter and use whether they are allowed to do so without any condition or on the condition that they pay an amount of money. The term also includes any building or place which is used to host public meetings or religious events such as open squares.

Acquisition:

It is said that a person is in possession of something, when such a thing is under his/her hold or when he/she has the power to dispose such a thing

even if it is in the possession of someone else or he/she has the power to dispose of it even if it is being kept in any place whether such place is his/hers or not.

If there is two or more persons and one or more of them have possession of something with the contest of the others.

Property:

Any living or non living thing that could be owned.

Money:

Money includes currency, banknotes, bank checks and other financial transfers and notes which include an order to pay money.

A Note that has Value:

This term includes every note which is owned by someone and proves his/her ownership of any property or his/her right to retain or receive any property.

Trading:

This term means the use or trading in something or to try to use it or trade it or to try to tempt others to use it or trade it.

Printed Material:

This term includes all written and printed materials and anything that contains visual drawings whether it is similar to written and printed materials or not. It also includes any material that by its image or shape suggests any words or thoughts and any copy of such material.

Publicly:

This term means:

The act took place in a public place and in a way that allows every person to see it whether such person/s was located in a public place or not.

The act took place in a place which is not considered a public one but the person who saw the act being committed was located in a public place.

Publishing:

This term means:

If it is related to speaking then it is publicly saying something or repeating it using a mechanical device in a public place or street or any other place which people have access to or repeating such words in a way that it is audible to persons who are in the street, etc.

If it is related to writings or drawings or photographs and their distribution to a number of persons or by displaying it in a way that it could be seen by people who are in a public street or place or by selling it or displaying it for sale.

Territorial Waters:

This term refers to any part of the sea which is located less than three sea miles from the last point of the spring tide.

Signature:

This term refers to the person who cannot write his/her name.

Public Servant or Official:

Any person who occupies any of the posts stated below or who performs the duties of such post on behalf of the public servant. This includes:

- Every civil post including the High Commissioner post, the appointment or termination to and from such post is given to H.M the King or the High Commissioner or to any public committee or commission.

- Any post the holder of which has to be chosen by the law.

- Any civil post the power to appoint its occupant is given to a person or a group of persons who assume one of the posts stated above.

- Any arbitrator or mediator in any case or procedure that was referred to arbitration by a court order or upon its consent or upon any legal provision.

This term also includes:

- Any member of any investigation committee appointed based on the provisions of any law.

- The person who is responsible for enforcing the procedures of any court.

- All members of the police or military forces in Palestine.

- All the officials working in any governmental department.

- Any clergy man regardless of the sect he belongs to when he provide personal status services such as marriage or death certification.

- Municipality employees.

- Village chiefs .

Al Wakae'a Al Falesteeniah:

The Official Gazette of the government of Palestine including its attachments and special issues.

Considering the Official Gazette:

Without prejudice to article (35) of the Interpretation Law, the submission of a copy of the Official Gazette which includes an appointment announcement or a communication or an add or the submission of a copy of any public add which was printed by the manager of the governments' printing house, shall be considered by the court as a primary evidence of the appointment and the legality of the public ad in addition to the legality of its content.

Judicial Procedures:

Includes all procedures that are implemented before any court or judicial council or investigation committee or any person before whom a testimony can be given, whether such court or

judicial council or committee or person heard the testimony after oath or without administering the oath.

Attempt:

A person shall be considered as if he/she attempted to commit a crime "felony or misdemeanor" if he/she started executing his/her intent to commit such a crime by using the tools and methods that would reveal his/her criminal intent but he/she was not able to execute his/her intent to the point that the crime would have occurred.

There will be no impact except on the penalty, whether such person committed all the necessary steps to complete the crime or not or whether he/she was not able to commit the crime because of external factors or because of declining to go on and commit the crime.

There is no impact if the crime was not committed because of factors that were not known to the criminal.

Assault:

It could be said that a person assaulted another if he/she hits or pushes or spans him/her or if he/she used any kind of force in any way, whether directly or indirectly with or without the consent of the assaulted person, if such consent was obtained by deception and fraud, such an act shall be called an assault.

The phrase "use of force" shall include the instances where light or heat or electrical power or gas or smell or any other substance or subject regardless of its type are used to the point that it might cause harm or nuisance to another person.

Theft:

Any person who takes or transfers a property without the consent of its owner in a way of deception provided that he/she has no right to do so and intends to absolutely deprive the owner of such property.

It is possible that a person is considered to be a thief even if the property he/she stole was legally in his/her possession "has shares with others in the property" if he/she transferred such property to his/her personal ownership or another person's ownership who is not the real owner of such a property.

A) The term "took a thing" includes airing it by any fraudulent way or by threatening its owner or because of a mistake that was done by such owner if the person who took it knows that he/she took it according to such way. It also includes if a person found something and he/she knows that the owner of which can be found if reasonable measures to find him/her are being taken.

B) The term "transfer" includes transferring the property from the place it was located or separating it completely from whatever it was attached to.

C) The term "owner" includes

any person who owns shares in the property which was stolen or the person who has possession over such property or the person who has the right to acquire such a property.

Anything which has value and is owned by a person shall be considered the subject of theft and if such a thing is attached to a real property it shall be considered to be subject to theft when it is separated from such a real property.

Robbery:

Any person who steals anything by using actual violence or the threat of using such violence during the commission of the theft or directly before or after committing it with the intent to obtain the stolen property and keeping it or with the intent to overcome any person who might resist him/her, such person shall be considered as committing a crime known as "robbery."

Burglary:

Any person who burglarize any part of a building "whether such a part is external or internal" or through opening a door or a window or any other things which aims at closing any entry to the building whether he/she does this by opening the lock or breaking the door or the window or the entry or by pulling it or by any other means, he/she shall be considered as burglarizing the building. The person shall be considered to be inside the building when any part of his/her body or any part of the tool he/she uses becomes inside the building.

Any person who enters a building by threat or through the use of deception or by conspiring with anyone inside the building or by entering the building's chimney or any other open spot that is always kept open without being used as a mean of entering the building, such person/s shall be charged with burglarizing that building.

Cheating and Swindling :

Any written or spoken announcement which leads others to believe in something that is not real shall be considered as cheating and swindling if the person who carried out such an announcement knew it is not true.

Kidnapping from Palestine:

It could be said that a person kidnapped another person from Palestine and transferred him/her beyond its boundaries without his/her consent or without the consent of the person who has guardianship over him/her by law.

Kidnapping:

It could be said that a person kidnapped another if he/she forced him/her or incited him/her by any deceptive way to leave to any place.

Forgery:

Is the organization of any unreal note for the purpose of deception.

Organizing Forged Documents:

A person could be considered as organizing a forged document if he/she:

Organized a document its external cover does not reveal its reality.

Changed or amended a document without being authorized to do so, provided that if such an amendment was allowed it would change the effect of the document.

Noted or wrote when drafting the document - without being authorized- what would change its effect if such information was authorized.

Signed a document :

In the name of another person without being authorized to do so by such a person, whether the name of the person is identical to the name of the person who signed the document or not, or

In the name of a fictitious person, who he/she claims to exist whether he/she claims that the name of the fictitious person is the same name of the person who signed the document.

The Intent to Defraud:

It could be said that a person organized and drafted a false document in order to cheat or defraud if his/her intention is to make someone else use such a document in a way that might cause harm to such person.

To establish the intent of defrauding at the time of drafting the document a person "known or unknown" who can be defrauded by the document. The defraud intent shall be established even if the perpetrator took or planned to take all the necessary measures in order to prevent the defrauding of such a person or even if what he/she is trying to gain through fraudulent acts is his/her right or he/she thought it is.

Unlawful Abandonment:

Abandonment reaches the degree of criminal neglect in carrying out a duty, whether such abandonment was conducted with the intent to cause death or bodily harm or not.

Causing Death:

A person shall be considered to cause the death of another person in any of the following instances even if his/her act or abandonment was not the direct or only cause which led to death: If he/she caused bodily harm to another person which resulted in subjecting him/her to surgery or medical care which caused his/her death. In such instances there is no effect if the medical care given was good or bad provided that it was administered in good faith and with due attention. If medical treatment was performed without good faith and it was the direct cause of death and if it was performed without reasonable knowledge or attention then the person who caused the bodily harm shall not be considered responsible for causing death.

If he/she caused bodily harm to another person which might not cause death if the person injured subjected him/herself to the needed medical care and took the needed precautions related to his/her way of life.

If someone forced another person to perform an act which resulted in the death of such a person through the use of violence or through threatening him or by using him and the injured person thought that the only way to escape such violence or threat is to result in his/her death.

If through his/her actions expedited the death of a person who has an illness or suffers from bodily harm that would cause his/her death without the action of the person.

If the action or non action would not lead to death unless it is supported by the action or non action of the person killed or other persons.

When to Consider a Child as Person:

A child is considered person who can be killed when he/she is delivered alive from his/her mother regardless if he/she was breathing or not or if he/she has an independent blood circle or not.

Defining the Time of Death:

A person shall be not be considered as the killer of another person if the death of such a person did not occur within one year and one day from the date the cause of death had taken place.

This period shall be calculated starting from the date when the last illegal action which caused the death took place. If the death was the result of not performing a duty the period shall be calculated starting from the date when the person stopped performing his/her duties.

If the death resulted in part from performing an illegal act and also from not performing a duty then the period shall be calculated starting from the date such an illegal act took place or from the date the person stopped performing his/her legal duties, provided that the priority shall be given to the later date.

Defining Slander:

Any person who intentionally and unlawfully published through the use of printed materials or drawings or photography or any other mean any material which is considered slander directed against another person, he/she shall be found guilty in the commission of a misdemeanor called slander.

A person shall be considered as he/she published slander, if he/she caused the display or the distribution of the written or printed materials or drawings or photographs or any other thing which constitutes slander to two or more persons together or separately.

Defining Defamation:

Any person who verbally and unlawfully publishes information which is considered defamation against another person, such a person shall be considered to commit a misdemeanor and shall be punished by imprisonment for one year.

Defamation can also be committed, if a person said defamatory words publicly in the presence of the victim or in a public place where others can hear him/her or if he/she did so in the absence of the victim by telling two or more persons of the defamation.

Definition of Slander:

Slander is considered if a person is accused of committing a crime or misdemeanor in a public post, or anything that might harm their reputation in their profession, industry, post or anything that might subject them to hatred, contempt, or ridicule of people.

The term 'crime' contained in this article signifies any crime punishable under this law, and any act punishable in accordance with the provisions of any legislation that is in effect in Palestine, and any other punishable act that is committed, in accordance with any legislation enforced in Palestine, if committed by any person in Palestine.

To prove slander, it is not necessary that the meaning of slander is directly or explicitly expressed. It suffices that it is possible to conclude the meaning of slander and to apply it to the person who claims to have been defamed either through the alleged defamation or slander, or through external circumstances or a part of this and a part of that.

Definition of Unlawful Dissemination:

In compliance with the intended objective of this chapter, the publication of any defamatory material against another person is considered unlawful dissemination except:

If the defamatory material is true and its dissemination will benefit the public interest.

If the publication of such material is exempt from culpability based on one of the following reasons stated in this chapter 'Penal Code of 1936'.

Violated:

The term 'violated' means failure to observe, and includes anything related to any assignment, specific condition in any legislation or permit or license or other authorization issued or given in compliance with any legislation.

Legislation:

The term 'legislation' signifies any law or system implemented, introduced, or issued before or after this law was in effect. It is a condition that this term which is included in any law implemented, introduced or issued before this law was enforced, shall have same specified meaning even if this law is not issued.

Legal Principle derived from the Cassation Court Judgments

Reviewing Urgent Requests shall be done in the Presence of One Party and the Court has the Right to Review it in the Presence of the Two Parties within two weeks of Submission

Judge Emad Saleem - High Court Justice

The Cassation Court sessions shall be held and headed by the court's Chief Justice and four of its justices. In case the Chief Justice is absent the court sessions shall be headed by his/her most senior deputy or the most senior attending judge. The Cassation Court is the highest court in the Palestinian Judicial System. In its capacity as a court of law it sits at the peak of the judicial system and is considered as the main guarantor for litigants. All final civil and criminal judgments issued by the Court of Appeals can be objected against before the Cassation Court provided that the objection to the judgments is based on the notion that the judgment negates the applicable law or that the court erred in applying or interpreting the law or the judgment is null and void or the procedures followed were null and void and affected the final judgment of the court.

The Cassation Court also has the authority to review contradicting judgments when such judgments are issued between the same parties and concerning the same subject matter. The Cassation Court reviews the judgments objected against and either it confirms the judgment when it finds that it confirms with the laws or it revokes it when it finds that it contradicts with the law. The Cassation Court also has the authority to appoint the authorized court when there is a dispute between two courts or more over jurisdiction and it also settle disputes that might arise between the different courts. It also reviews objections submitted before it which concern personal status issues for non Muslims. The Cassation Court jurisdiction also includes reviewing any petitions submitted before it according to any applicable law.

In all the above mentioned instances where, the court has authority to review the objection, its judgments cannot be appealed or objected against in any way. The following is an illustration of some of the legal principles that were contained in judicial judgments issued by the Cassation Court.

Legal Principles

Article (104) of the Civil and Commercial Procedures Law allowed the review of any urgent request in the presence of one party only.

The urgent matter judge and the court has the right to review the urgent request in the presence of both parties within a week of the request submission date. In such case the defendant has to be notified according to the provisions of article (13) of this law.

Notification through phone or fax shall be null and void.

The court has to verify and make sure that the request to appoint a guardian is just according to article (274) of the Civil and Commercial Procedures Law.

Article (266/1) of the Civil and Commercial Procedures Law allows the submission of the precautionary attachment request before registering the civil case or when it is registered or during the trial of such a case according to the conditions stated in article (266/2,3,4). The review of such request shall be done in the presence of the petitioning party and without the presence of the other party so he/she could not leak the properties to be attached by the court.

Article (223) of the Civil and Commercial Procedures law stated "if the court of appeals decides to annul the appealed judgment it shall decide to send back the case to the first level court" its decision to send an official letter to the guardian and the Land Registration Department does violate and go beyond the powers given to it according to the previously mentioned article.

Decision

Issued by the Cassation Court, which convened in Ramallah and given the right to conduct the trial and issue the judgment in the name of the Arab Palestinian People.

The Presiding Panel: Headed by Justice, Ameen Abduls Salam Al Azoni and members Mohamed Shehadah Seder, Osama Al Taher, Fareed Musleh and Fathi Abu Sorur .

The Defendant: The Girls Rehabilitation Workshops

Attorneys: Shukri Nashashibi and Mahmoud Khalil- Ramallah.

The Procedures

This is an objection against the decision issued by Ramallah's Court of Appeals on the 12th of April 2004 in the civil lawsuit number 70/2003. The decision includes the nullification of the decision issued in relation to request number 35/2003 stemming from civil lawsuit number 116/2003 - Hebron First Instance Court- and halting all the decisions effects in addition to ordering that all the papers and documents related to the original lawsuit be sent back to the trial court- Hebron First Instance Court- in order to review the request in the presence of both parties. The court of appeals also requested that the Chief Clerk of Hebron First Instance Court send an official letter to both the guardian and the Land Registration Department in Bethlehem informing them of the Courts of appeals decision.

The objection is based on the following reasons:

1. The Court of Appeals erred in the way it dealt with the Hebron Court Notification of the petition number 35/2003.

2. The Court of Appeals erred by considering the notification as null and void.

3. The Court of Appeals erred in requesting the notification of both the guardian and the Land Registration Department in Bethlehem in order to make them aware of its decision.

The plaintiff requested that his objection be accepted by the Cassation Court and that it will nullify the decision of the Court of Appeals and order the other party to pay the fees, costs and lawyer fees.

The Judgment

Because the objection was submitted during the legal period and it fulfills all the formal



ity conditions prescribed by the law, the court decides to accept it and review it accordingly.

As to the objection's subject matter and after reviewing and discussing the issue of the objection we find that appeal related to the appointment of a guardian who is to oversee the distribution of the rent money stemming from leasing out the contented property. It is also related to attaching the property of the defendant by ordering Bethlehem's Land Registration Office to place the attachment on the property's records and not to allow any transaction related to it until the original lawsuit is disposed.

The defendant's judgment included the nullification of the decision issued because of the mistakes related to the notification of the parties evident in the Hebron court decision, where it notified both parties to attend the hearing because the court was not convinced that the request submitted is an urgent one and decided to apply the provisions of article (104) of the Civil and Commercial Procedures Law number (2) of 2001 which gives the court the right to notify the other party without having to adhere to the notification procedures stated in article (13) of the same law and without proving that the defendant's were notified of the court hearing.

What we saw here is that article (104) gave the court the authority to review the request in the presence of one party or the court or the urgent matter judge can decide to review the request within one week in the presence of both parties. The Hebron First Instance Court "the trial court" scheduled a hearing to be held on the next day in the presence of both parties and notified the defendant of the hearing date by phone and fax and did not notify them according to the legally followed procedures. The court did not give the defendant the opportunity to reach the court in Hebron from Bethlehem where they live given the harsh conditions and restrictions on movement of people. The court's decision to hold the hearing the next day contradicts its decision that the request could not be handled and treated as an urgent one. This leads this court to approve the conclusions reached by the Court of Appeals, where it nullified the nonfiction conducted by the phone or fax and find such decisions confirm articles (22 and 23) of the Civil and Commercial Procedures Law Number (2) of 2001. But we also find that even if this was true and correct regarding the nullification of the guardian appointment in order to discuss such appointment in a hearing session where both parties are present so the court can verify the and fairness of the request according to article (274) of the Civil and Commercial Procedures Law, the nullification of the attachment imposed on the property does not conform with the law because article (266/1) of the Civil Procedures permits the submission of the precautionary attachment request even before the registration of the lawsuit or when it is registered or during the trial provided that the conditions stated

in article (266/2,3,4) are present. The precautionary attachment hearing can be held in the presence of one party (the requesting party) only in order to prevent the disposal of the attached properties.

Article (271) of the same law stated "the debtor has to be informed of the attachment of his properties within one week from the date the attachment, where he/she has the right to challenge the attachment decision before the same court. The court might decide to revoke the attachment decision, while article (274/1) permits the submission of the guardian appointment request whether before the attachment decision or after. The court has the power to appoint the guardian if it sees that such a request is just and fair and it is natural that such decisions can be taken by the court after it has the opportunity to hear the evidence submitted by one party when the court decides that the matter is an urgent one or after hearing the evidence submitted by both parties if the court sees that the matter is not an urgent one, in the later case the court has to schedule a meeting according to article (104) within one week of the date the request.

For all the above mentioned reasons, arguing that the notification of the defendant to attend the hearing session held to review the guardian appointment request shall not include the judge's decision to nullify the attachment. Article (26/1) of the Civil and Commercial Procedures Law states "if the procedure taken are null and void but it contains the elements of another procedure, then the second procedures shall be a valid one" and article (26/2) also states "if only part of the procedure taken is null and void, it shall not affect the correctness and legality of the rest of the procedures taken" while article (26/3) states "if the previous or subsequent procedures taken are not based on the nullified procedure, it shall not be affected by it."

Article (223) of the Civil and Commercial Procedures Law states "if the Court of Appeals decides to nullify the appealed judgment, it has to return the case to the first level court" and thus the court's decision to send an official letter to the guardian and the Land Registration Department exceeds the authority given in the previously mentioned article.

Based on what is stated above, we do decide to accept the objection in relation to the nullification of the attachment decision and nullify the decision and we also decide to reject the objection directed against the court's decision to appoint a guardian and confirm this part of the court's decision. We order that the papers related to the nullified decision be returned back to the court in order to review it according to the applicable legal rules. The fees, cost and attorneys fees shall be paid by the losing party.

A judgment issued April 17th, 2004 in the name of the Arab Palestinian People.

The Duties of Judges

Judges have values and traditions that no one is allowed to steer away from under any pretext. It is true that we do not claim that they are above being swayed by emotions, but we can reaffirm that among humans, none have a more impeccable conscience, or purer heart, or more uprightness, and they are the best image of honor and integrity, fairness and impartiality and the farthest from deviating.

There is no doubt that mistakes committed by judges differ from those committed by other employees of the National Authority. No matter how serious their mistakes are, they will not be as serious as those committed by judges, and that is because their impact is not restricted to one person only, but spreads to encompass the whole society. Therefore, it is mandatory that judges do their job, otherwise this would constitute a disciplinary misdemeanor against them. To emphasize the impartiality of the judiciary, the Palestinian legislature has imposed upon the judges in accordance with Article (2/28) of the Judicial Authority Law to submit to the Head of the High Court upon appointment a statement of their financial position, their spouses and minor children. This information details all their properties, variable assets, stocks, bonds and cash in and outside of Palestine as well as all their debts. The Head of the High Court will take all procedures to maintain confidentiality of the information which shall be maintained and may not be viewed except by permission from the High Court upon need.

For all the above, judges have to be cognizant with the ethics of their noble mission. They have to deepen their own concepts and traditions. In this, we see that the topics that should be of the utmost concern are the values and traditions of the judiciary and reviewing their duties in and outside work, according to the following:

First: Duties related to ensuring regularity and sustainability of work.

Courts are set up to perform a public service which is indispensable to the public out of concern for the public interest. Courts have to perform their public services in such a way as to enable the public to benefit from them. This objective cannot be fulfilled unless their regular and sustained functioning is ensured.

Since judges are considered the models of the administrative system at the courts, the prosecution and assistants of the judiciary and the litigants, they have two responsibilities in this regards, which are:

1- The responsibility of starting work at the specified time and location.

2- The responsibility of not absenting themselves or stopping work without a legal alibi.

Therefore, Article (31) of the Judicial Authority Law stipulated that:

1- It is not permissible for judges to absent themselves or to stop working without an excuse before notifying the head of the court to which they belong.

2- Judges are considered to have resigned if they stopped working for a period of 15 consecutive days without an excuse acceptable to the Judicial Council, even after the expiration of their holidays or their secondment assignments or their delegation for another job.

Second: The responsibility to allocate all the time to work.

The idea of the judiciary is that judges practice their judicial mission; they dedicate their lives to it and give it all their time. Consequently, they are committed to the following:

1- They are obligated to devote themselves to the duties of the judicial work.

2- They are obligated not to have another job, not even as a matter of voluntary work – should this conflict with the duties of their job.

Third: The responsibility of serving in the Judiciary.

Not surprisingly, the work of the judiciary has been associated with customs and traditions. Therefore, the judges have been honored with the mission of justice. Some of the old traditions associated with judicial work requires of judges to wear special clothing while exercising judicial work. Even outside their work, judges are required to be distinguished and well-dressed.

By Judge Abd El-Qader Jaradeh
Gaza First Instance Court

Fourth: The responsibility to reside at workplace. It is not advisable that people ask for the judge and not find him/her. Accidents or catastrophes might happen, and people might need a judge to issue a search warrant, or to extend the arrest of an accused person, and other procedures, and this requires the presence of the judge at their work during official working hours.

Fifth: The responsibilities related to controlling performance at work.

Judges are not arbitrators only; they carry out a task entrusted to them by the law. Additionally, guardians of the law have to be impartial like the law itself. Consequently, they have to abide by the following:

1- They are obligated to carry out their judicial work by themselves.

2- They are obligated to be impartial technically, politically and socially in their judicial work.

3- They are obligated to do their work in accordance with the provisions of the law.

4- They are obligated to finish their work within the legal deadlines.

5- They are obligated to carry out judicial work with extreme accuracy.

6- They are technically and administratively obligated to supervise their subordinates.

7- They are obligated not to do anything that might lead to making enemies out of anybody.

8- They are obligated to step down from rulings if this is proven necessary.

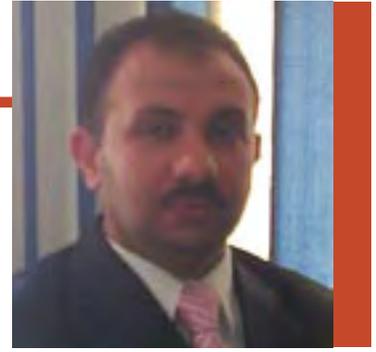
9- It is obligatory for judges to be well-informed in the law and the art of judicial laws.

10- They are obligated to observe the limits of the authority to appraise and evaluate things.

11- It is obligatory that judges respect the rules of interpreting the law.

12- Judges are obligated to respect the rules of evidence.

There is no doubt that mistakes committed by judges differ from those committed by other employees of the National Authority. No matter how serious their mistakes are, they will not be as serious as those committed by judges, and that is because their impact is not restricted to one person only, but spreads to encompass the whole society.



13- Judges are obligated not to exceed the limits of their appraisal authorities.

14- They are obligated to maintain confidentiality.

15- They are obligated not to exploit their posts to bring about a personal profit.

16- It is obligatory to treat colleagues and assistants of the judiciary and the public with consideration.

17- It is obligatory to be committed to the impartiality and independence of the judiciary.

18- It is obligatory to seek the truth.

19- They are obligated to regularly attend training courses.

Sixth: The responsibilities of judges outside work.

The responsibilities of the judges are not restricted to the tasks they carry out – upon appointment, they are also held accountable for what they say or do outside their work. Since they are individuals in the society and since any shameful behavior and its impact is reflected upon the dignity of the position and whoever is occupying it which minimizes its authority and undermines the trust in the integrity of the person in charge of it, judges - due to all these reasons - have to maintain the following duties:

1- Not to combine judicial work and prohibited acts.

Hence, Article (1/28) of the Judicial Authority Law stipulated: 'Judges are not allowed to conduct any commercial work. They are also not allowed to conduct any work that is not in line with the independence of the law and its dignity. The Supreme Judicial Council may decide to prevent judges from being engaged in any work that they view as incompatible with the duties of the post and with good practice.'

2- The duty of good conduct and to maintain the dignity of the judiciary.

3- The duty of judges to practice a righteous private life.

Abu Sharar opens the Bethlehem Courthouse and the Head of Court announces the Beginning of Smoking Ban

Chief Justice, Issa Abu Sharar reasserted that the Supreme Judicial Council has entered its second phase in achieving its objective embodied in providing a suitable infrastructure for litigation, and for the judges, lawyers and citizens in the courts to achieve a model Palestinian Judiciary. Abu Sharar clarified during the dedication of the Bethlehem courthouses on July 15, 2009 that the Supreme Judicial Council was working on improving court buildings and public service facilities. An area of about 750 square meters was added to the second floor of the courthouse so that its area doubled to 1400 square meters. The second floor which comprises courts of the First Instance and the Conciliation was built with support from PECDAR and funding from the Malaysian Government. This comes in addition to the renovation of the first floor which includes the enforcement departments, the Notary Public, the court chambers and the public service facilities which was supported by the Netham Rule of Law Project funded by USAID.

Besides the Chief Justice, other guests at the dedication included Minister of Public Works and Housing, Dr. Mohammad

Ishtayyeh; Head of the Bethlehem Court Mr. Hazim Idkeidik; Mr. Nabil Isifan Chief of Party of the Netham Project; Governor of Bethlehem Mr. Abd El- Fattah Hamayel; the President's Advisor on Settlement Issues Mr. Salah Ta'mari; the representative of the Fatah Parliamentary Bloc in Bethlehem, Mohammad Al-Lahham, "Abu Khalil"; Bethlehem Police Chief Khalid Al-Tamimi, and a number of key figures in the district, as well as three judges from the Gaza Strip, Ishaq Muhanna, Mazin Sesalem, and Ali Alfara.

In his speech during the dedication, Dr. Ishtayyeh explained that the project of the Bethlehem Courthouse cost reached \$270 000; \$200,000 from the Malaysian government and \$70,000 from PECDAR.

Chief of Party of the Netham Project, Mr. Nabil Isifan in his turn addressed in his speech the Palestinian people wishing that they would all work together for the support of the Judiciary and providing all the means to help develop it and stressed that empowering the institutions of the justice sector in Palestine is considered fundamental to bringing about prosperity for citizens.

Head of Bethlehem Court Judge Hazim Idkeidik announced that the courthouse would be a smoke-free environment for all the citi-



Judge Issa Abu Sharar opening the Bethlehem Courthouse.

zens and the employees including the judges and lawyers under penalty of law. Idkeidek alluded to the court's former situation when there was only one or two judges, whereas currently the Bethlehem Conciliation and First Instance courts includes 12 judges. He also pointed out that the past judicial year registered 2185 new filings out of which 3173 were disposed, meaning an average of 100% of the filings for the year, and a high percentage of the accumulated filings in the previ-

ous years. Added to this, the judges have reduced the number of pending filings in the courts from 4712 to 3934 filing.

At the end of the dedication, the officials and the participants in the ceremony led by Judge Abu Sharar went on a tour of the second floor of the Bethlehem Court. They also viewed the repairs and the renovation of the first floor. At the end of the tour they praised the role of the judges and their work.

Reversing Decisions issued in Summary Procedure Cases and Unifying such Procedures

By: Judge Mahmoud Jamous,
Head of Jenin First Instance Court

The Judicial system suffers from the problem of applying different procedures by the various courts when reviewing and deciding requests to "reverse court decisions issued in summary procedures cases." The procedures applied differ from one court to another and even between judges in the same court. In order to unify such procedures and its application among the various courts and judges, we should shed light on some of the related legal points that this study is going to discuss, but before doing so it is worth mentioning that since we started applying the current Civil and Commercial Procedures Law, there were no clear answers to the important question of whether the courts should treat the requests submitted before them in order to "reverse the decisions issued in summary procedures cases" according to the summary procedures or the ordinary procedures. This ambiguity continued to exist until the Palestinian judiciary through the decisions of the Cassation Court differentiated between the requests submitted by the applicant in order to grant the application speedy procedures by the court to prevent the continuation of a situation that might cause grave harm to the applicant (where he/she has to post a bond in order to compensate the other party of any harm that he/she might incur, if the applicant's request is found to be without any basis) and the request submitted to the court asking it to reverse its summary decisions which was issued in the presence of both parties and was not aimed at urgently protecting an endangered right. Thus the court shall not apply any of the summary procedures when dealing with such a request even if it should be dealt with without any undue delay.

The Palestinian legislature dealt with summary prosecutes requests (urgent requests) in the eighth section of the sixth chapter of the Civil and Commercial Procedures where article (109) of the law deals with reversal requests and states "the defendant in an urgent request has the right to submit a request to the judge who issued the decision in order to nullify or amend such decision."

The Palestinian legislature also stated in article (271) that "the debtor has to be notified of the at-

tachment decisions concerning his/her properties within one week of the attachment date and he/she has the right to submit a request to the same court in order to leave the attachment and the court has the power to order the leave of the attachment with or without the posting of a bond."

Researching the reversal requests is a very important topic because it deals with a very interesting matter. As stated above we are going to deal with this subject by discussing the following points:

First: What is the "reversal request": it is a right given to the defendant in the urgent request from the date the urgent decisions is issued against him/her, such as when the court issues a decision ordering the defendant to halt any construction work. The Palestinian law provided such defendant with the right to object to such a decision and request the court to nullify or amend the decision at hand (article 109 of the Civil and Commercial Procedures Law). It is worth mentioning here that a reversal request requires that there is an urgent decision issued according to summary procedures against the defendant. The Palestinian law also granted the defendant in case of precautionary attachment the right to request the court which ordered the attachment to leave it with or without a bond according to article (271) of the Procedures Law.

Second: The party requesting the reversal i.e. the party which submits the request for reversing the urgent decision is the party against which such a decision was issued. The party shall submit a request to the court asking for the nullification or amendment of the decision (article 109 of the Procedures Law).

Third: Who decides upon the reversal request, according to article (109) the reversal request has to be reviewed and decided upon by the judge who issued the related urgent decision, whether such judge is the urgent matters judge or the subject matter judge who presided over the urgent request according to the original lawsuit.

Fourth: The deadline for submitting the reversal request according to article (109) does not include any deadline for submitting the reversal request, thus the defendant can submit such a request to the court as long as the urgent decision is in effect

regardless of the length of such a period.

Fifth: the deadline for appealing the decision issued in relation to the reversal request according to article (205/2) of applicable procedures law defined the period during which the parties can appeal the urgent decisions by fifteen days. Article (102) of the procedures law gave the party who fears to be harmed from the elapse of time to submit a request to the urgent matters judge requesting him/her to take certain temporary actions in the presence of the applicant alone or to appoint a hearing date in order to review the application in the presence of both parties within seven days from its submission without dealing with the case's subject matter. Thus the urgent decision is usually issued in order to avoid a certain situation the continuation of which might cause harm to the applicant. The application has to submit a bond in order to guarantee any harm that might affect the defendant in case the court proves that the applicant erred in his application. The reversal of the urgent decision shall be issued in the presence of the two concerned parties and does not aim at protecting an urgently threatened right. Article (205/1) defined the appeal period by thirty days unless the law provides otherwise. The Palestinian judiciary practices in this area are consistent with such interpretation. I would like here to point out the Cassation Court decision number 55/2004 - 82 issued on the 18th of May 2004.

Sixth: Difference between lifting the attachment according to article (271) and nullifying the attachment according to article (109); the request for lifting the attachment submitted by the defendant in the urgent request when the court imposes precautionary attachment on his/her property. Such request differs from the request which is usually submitted in order to nullify such attachment or amend it according to article (109) of the Civil and Commercial Law number (2) of 2001. In the request where the defendant seeks the lifting of the attachment, he/she has to submit evidence that supports the reasons he/she gives to show that the attachment was not necessary, this is usually done by submitting evidence that shows that the defendant is not avoiding to pay by leaking his assets or the attached proper-

ties in addition to submitting a bond in order to guarantee that he/she will pay whatever the court decides. Lifting the attachment in the presence of a bond submitted by the defendant indicates that he/she will live up to his/her obligations once decided by the court.

On the other hand the request submitted in order to nullify or amend the precautionary attachment decision concerning the defendant's property has to be based on the fact that the special requirements stated in the law for imposing such attachment are not present or that the judge erred in evaluating the existence of such requirements or if the defendant managed to submit his/her evidence that negates the applicant's claims such as that the debt is not due or it was paid back or the debt is attached to a requirement which was not fulfilled. The Egyptian Court of Cassation stated that "because the subject matter court proved that the debt was not proven when the attachment was imposed, the court has to nullify the attachment imposed." Thus the difference is expressed in the conditions surrounding the request which might change, thus the applicant is not requested to post a bond when requesting the nullification or amendment of the attachment.

Seventh: How does the court review the reversal request (applied procedures)?

1- Submitting the reversal request :

The defendant in the urgent request submits the reversal request to the same court/judge which issued the decision in the urgent request. After the judge reviews the file, he/she shall schedule a hearing date where both parties are present. This means that the reversal request cannot be heard in the presences of one party which differs from hearing the urgent request which can be heard in the presence of only one party or in the presence of both parties if the judge so decided.

2- Reviewing the reversal request :

At the scheduled date the judge shall review the reversal request according to the ordinary procedures followed by the court and shall hear the evidence and arguments submitted by both parties. If he/she saw that there is a need to postpone the hearing for another date he/she can do so provided that the postponement is done for a short period of time.

3- Issuing the decision in the reversal request :

After hearing all the evidence and arguments presented by both parties the judge shall issue his/her decision in the reversal request. The decision might nullify or amend the decision issued in the urgent request or it might confirm such decision and dismiss the reversal request.

Conclusion

In order to unify the procedures followed by the various Palestinian courts, it is important to stress the following points:

- 1- The reversal request can only be submitted when there is a decision issued as a result of an urgent request.
- 2- The reversal requests cannot be reviewed in the presence of one party; they can only be heard in the presence of both parties.
- 3- The reversal request has to be submitted to the same judge who issued the decision in the urgent request, whether this judge is an urgent matters judge or a subject matter judge.
- 4- The reversal requests shall be submitted according to article (109) of the Procedures Law without having to do so within a stated period of time.
- 5- The reversal request has to be heard according to the ordinary procedures followed by the courts and shall be dealt with promptly and without any undue delay.
- 6- The decision issued in reversal requests is subject to appeal within the same period applicable for ordinary decisions, which is thirty days from the day the decision was issued.
- 7- Reversal requests shall not be heard as urgent requests because they do not aim to protect a threatened right.
- 8- Reversal requests shall not halt the proceedings in the original case because the request differs from the case.

Unprecedented Development of the Palestinian Judiciary

Continued from page 1

There are several indicators that point to the development of the Palestinian judiciary. First, the development of the judiciary is seen in the increasing number of adjudicated court cases. During the past year the judiciary managed to bring about a balance between the number of incoming cases and adjudicated cases, in spite of the increase in incoming cases, which totaled 77,515, an increase of 48 percent compared to last year.

The second indicator concerns the enhancement of internal monitoring of the functions of the judges and judicial departments through activating the role of the Judiciary's Inspection Department, reinforcing the capacities of judges in case management, and upgrading the competence of judges by offering them training courses organized by the Supreme Judicial Council.

The unceasing efforts to institutionalize the Supreme Judicial Council constitute the third indicator. New departments, administrations, and institutions have been established, and they cooperate among themselves and with the Supreme Judicial Council in managing the affairs of the Judicial Authority. There are now competent bodies and departments such as courts management, judicial training, judicial inspection, strategic planning, media and public relations, IT, the general secretariat of the judicial council, the technical office, and the head of the Judicial Council Office.

In addition, a fourth indicator of the development of the Palestinian judiciary is the policy of automation of courts. Computer

programs have been distributed to courts will facilitate better adjudication of court cases and enable us to review the status of cases and adjudicate them centrally, thus raising the efficiency of the courts in case adjudication. Work is being undertaken to develop these computer programs.

The fifth indicator involves the continuous efforts of the Judiciary Authority to provide the most conducive environment for litigation. We can talk about the existence of four typical courts in the West Bank districts of Nablus, Jenin, Jericho, and Bethlehem. The expansion of courts in other districts is also taking place, and we hope that the building of new courts in all districts will begin soon.

Furthermore, the Judiciary Authority is making new judicial and administrative appointments in order to meet the needs of the courts. The new judicial year started in September 2009 in all West Bank courts when 146 of 190 judges working in the West Bank and Gaza Strip began their work. The judiciary is still in need of more judges, however.

The last indicator shows increasing public trust in the Palestinian Judiciary Authority. According to statistics from the Palestinian Central Bureau of Statistics and a survey conducted by the Judiciary Council, the public has developed a higher level of trust in the judiciary. In addition, the Judiciary Authority has strengthened and organized relations with the civil society by signing a Memorandum of Understanding with civil society institutions. Stronger relations have also been established with the media, and memos

were sent to heads of courts requesting that they facilitate court access for journalists and reporters.

We are proud of the achievements of the Palestinian Judiciary as an independent authority. However, we believe that optimal independence is still lacking. The nature of judicial work in terms of resolving conflicts between individuals on the one hand, and individuals and administrations on the other, requires the existence of an independent and neutral judicial body that has its own separate budget. We must develop mechanisms whereby donors would be willing to aid the judiciary without causing any decrease in its independence. Millions of euros and dollars have been spent in support of the judiciary, but the judiciary has experienced very limited and modest benefit from the projects funded by donors. In fact, much of the money that was supposed to support the judiciary has been wasted, and many and I do not say all have made attempts to interfere in the affairs of the judiciary.

The Palestinian judiciary has matured and has no need for guardians; all it needs is aid and assistance to complete its development. We need to amend some legislation, such as the Judicial Authority Law, in order to provide judges and the High Judicial Council with more efficient tools that would help to further the development of the judiciary. In this respect, I hope that all those concerned would endorse the legislation proposed by the Judicial Council, especially the legislation pertaining to the General Amnesty Law and the Formation of Courts Law, as well as other procedure laws. The amendment of these laws has already been approved by the Judicial Authority and the Supreme Judicial Council.

The Importance of Rulings of the Cassation Court in Judicial Training

By Fateh Hamarsheh
Technical Office

The Cassation Court sees that laws are applied. It monitors the courts of the lower degree and it approves their appropriate rulings when applying the law to the cases submitted to them. It also repeals any decisions taken in opposition to the law and rectifies them.

Since the task of the Cassation court is based on the proper application of the law, it is mandatory that it monitors the work of courts in all matters related to legal issues and the means of applying them to reality. Consequently, the work of the Cassation Court is not limited to reviewing the appealed ruling which is submitted before it, then repealing or ratifying it depending on whether it was in concordance with the law or in opposition to it. In fact it is the responsibility of the court to debate the grounds of the appealed ruling with the result and the extent of the appropriateness of the grounds to the result and the logical link between them. The Court of Cassation might agree with the court which has issued the appealed ruling, nevertheless opposing it on the grounding. Here, the Court of Cassation works on clarifying the failing which resulted in the appeal, and rectifies it elaborating with sound legal means acceptable to the readers' logic, and putting the concerned court on the track

to process the cases submitted before it without any trouble or difficulty.

The former conduct of the Court of Cassation leads necessarily to the training and comprehension of the judges of legal matters as each ruling issued by the Court of Cassation in a certain case is actually a lecture that educates the judges and people working in the law on this issue.

To convey these rulings and to make them known to judges so that they may understand their intended aims and meanings – near and far – the Technical Office was given the responsibility of concluding and disseminating the legal principles in accordance with Article (26) of the Law of Formation of Regular Courts which stipulated the establishment of a Technical Office under the jurisdiction of the High Court supervised by one of its judges. The main task of the office would be to conclude the legal principles from the rulings of this court, classifying and disseminating them, and hence contributing to putting all rulings of the Court of Cassation and the principles concluded out of these rulings within easy access of the judges through which they can reach the intended ruling without trouble.

The court judges' possession of the High court rulings which might have been grounded and reasoned presents them actually with many legal issues that the court has addressed and explained, contributing hence, to reinforcing



High Court session.

ing the readers' understanding and removing any confusion that might take place. This necessarily leads to educating and indirectly training the judges and the people working in the law, since training is not restricted to people seated in a classroom before a lecturer receiving information or simulating court hearings or others. This, however, includes what people receive on their own to train themselves in addition to constant follow-up of all that is new in their specialization and field of profession. In our case as people working in law, this takes shape in reading the rulings of the High Court

in particular, in addition to reading books and periodicals published in the science of law.

Finally, the responsibility of training judges, particularly, and lawmen in general, is not only the responsibility of the Department of Judicial Training which exerts a lot of effort in this matter. However, it is the responsibility of the High Court as well as the fact that it is its significant role to draft court rulings and ground them besides the task of the Technical Office to disseminate and classify judicial rulings and conclude principles from them in addition to the judges' role in reading and follow-up.

Collecting Local Authority Revenues by the Civil Judgement Department According to Enforcement Law number (23) of 2005 and Local Authorities Law number (1) of 1997



By Mounes Abu Zainah, Jenin
Civil Judgement Department

The local authority's revenues can be defined as "the revenues which can be collected for the benefit of the local authority according to the provisions of the law."

Such revenues are divided according to who has the right to collect them into two types: revenues, which are collected by the Executive Authority and its different agencies. Such revenues have to be kept for the benefit of the local authority at the Ministry of Finance. The second type is the revenues which are collected by the local authority itself (1). The subject of this paper will be limited to the second type of revenues that is the revenues which are collected by the local authority itself because the local authority is banned from using the civil judgement departments in order to collect the revenues which the law gives Executive Authority the authority to collect them (2).

The local authorities' revenues can also be divided according to the nature (subject) of such revenues. For example there are the handicraft fees, the fruits and vegetables fees, parking fees, commercial signs and advertisement fees, etc. (3).

In relation to the collection enforcement procedures, the Palestinian Enforcement law contains many provisions and procedures

which expedite the collection procedures. At the same time the Enforcement Law requires the presence of many conditions such as that the right to be collected has to be undisputed, thus the parties of the enforcement order has to be clearly defined and the rights stated in the order have a certain and defined value. It is not enough to only state that the laws and regulations state the collection of certain fees, rather the order has to state the amount of the fee. The debt in the enforcement order has to be due, thus due attention has to be given to the debt's due date according to the laws and regulations related to the local authorities.

By reviewing article (27/10) of the Local Authorities Law number (1) of 1997, which states that "the head of the local authority has the right to collect the authorities overdue revenues through the civil judgement department according to the same procedures followed in collecting ordinary private debt instead of collecting them according to this article if he/she saw that this is in the best interest of the local authority."

The above stated paragraph gives the needed legal value to this method of collecting local authority revenues and the reason behind providing such method is to expedite the collection process. The local authority is providing services to the geographical area it was established to serve and the citizens residing in such area according to the law. If the local authority was not able to collect its revenues in a speedy and efficient manner it would affect its financial status and its ability to provide the services. The end result of not having an efficient method for collecting revenues would be harmful to public interest.

According to what has been stated, this method of collection is based on the same legal procedures followed in collecting private debts which were approved by a final judgment.

I believe that a legal point has to be discussed by reviewing the above stated article (27/10). This article starts "the head of the local authority has the right to ..." and ends with "if he/she sees that this is in the best interest of the local authority." By reading these

two phrases we can conclude that using this method of collection can only take place based on a decision taken by the head of the related local authority allowing the application of such a method.

As to the legal value of this method of collection we will conduct a comparison between this method and the direct collection method which is based on the decision of the head of the local authority (4) and also I will compare between the collection of the local authority revenues using the method of collecting private debts and the enforcement of other types of bonds.

The Local Authorities' Law gives the instrument or order which contains a right for the local authority a legal value which protects such a right and secures its speedy collection provided that such rights fulfill all the above stated conditions.

The importance of such legal value or nature is that judgments are considered the most important enforcement bonds because it includes a full confirmation of the existence of the debt and it also include an obligation the debtor has to pay. Such bonds after being subject to all the objections provided by the law they are the address of the truth and cannot be negated in any way (5).

This means that the enforcement (collection) of such instruments cannot be delayed or halted, which is contrary of other types of instruments, where its collection can be halted by objecting to them using the various legal methods of objection. This means that even if the debtor denied the debt he/she cannot halt the enforcement (collection) and the civil judgement department has to continue the collection process.

The legal value of such a method can be clearly illustrated if the instrument to be enforced is a customary one (such as an agreement to pay certain dues), in such cases the objection submitted by the debtor shall not halt the collection procedures. The court before which the debtor is objecting the collection has to order the debtor to dispute the amount to be collected before it issues its order halting the collection procedures until

it review his/her objection and rules on it (6).

I do believe that this method of collecting local authority revenues is faster and more reliable than the method stated in article (27) of the Local Authorities' Law (7). There are other supporting reasons for supporting this method of collection, among them the fact that collecting revenues according to this method has to be based on judicial judgments while the direct collection method is based on the decisions of the head of the related local authority without referring the issue to the judiciary. The method prescribed in article (27/10) also provide for pressure tools to be used against the debtor such as imprisonment where the direct collection method lacks such tools.

Lastly I would point out that the legal provisions which regulate the direct collection method contain many problems and weaknesses such as the case of attaching moveable property where the law does not require the notification of the debtor of such attachment which contradicts the principles of justice. The notification procedures of the debtor in case he was not found negates the notification principles which requires the notification of such person at his/her last known place of residency and the use of the court's announcement board in addition to the publication in local news papers (8).

1 - Article 2 and 26 of the local Authorities law no. 1 of 1997 will be mentioned later as local Authorities Law.

2 - Article (27/12) of the Local Authorities' Law.

3 - See article (2) of the Handicraft and Industries Law number (16) of 1953, article of the vegetable market system no.3 of 1998, and article (6) of the Cars' Barking Lots Regulation number (2) of 1998 and article (9/j) of the Advertisement Signs number (5) of 1998.

4 - Article (27/2-9) of the Local Authorities Law .

5 - The Enforcement Principles according to the Procedures Law, Dr. Mufleh Qudah, page 62, 1997.

6 - Article (27/4) of the Local Authorities Law.

7 - Article (27/9-2) of the Local Authorities Law.

8 - Article (27/3) of the Local Authorities Law.

On the Occasion of the New Judicial Year

Judge Abu Sharar calls upon Judges to take into Account Civil Peace when reviewing the Acquittal of Criminal Detainees

His Excellency Judge Issa Abu Sharar, Head of the Supreme Court and Chief Justice called upon heads of courts and judges to draw upon their evaluative authority when reviewing acquittal cases submitted before the courts. Abu Sharar said that complacency in the acquittal standards in homicides and the other serious crimes infringe upon the interest of civil peace and society's security and stability. He pointed out that reconciliations and extinguishing one's personal right would impact the degree of punishment when issuing the verdict and not when reviewing acquittal requests.

His Excellency's words came during a meeting which he held Tuesday September 1st, 2009 with the Heads of the West Bank Courts of Appeal and First Instance Courts on the occasion of the new judicial year. During the meeting, the Chief Justice addressed some issues of concern to the courts and which help reactivate their role in achieving justice in society. He also listened to the urgent needs of the courts for the new judicial year.

Abu Sharar asked that First Instance Courts draw up work strategies that would speed up the disposal of crime cases reviewed before the courts indicating in this respect that the Supreme Judicial Council had decided in its judicial formation, which it has recently announced the formation of two crime commissions in each of the courts of Nablus and Ramallah. One crime commission was designated in the rest of the West Bank courts in addition to mandating new conciliation judges for the First Instance Courts in the present formation, and after the new group of conciliation judges who will be distributed among the courts.

Abu Sharar reiterated that it was essential that judges' deal with lawyers with neutrality as well as other parties warning that any discrimination that may take place. He also demanded at the same time that all judges to be patient and fair in their treatment of the public unless the latter's conduct infringes upon rules of court respect.

Regarding the relationship with the Prosecu-



Chief Justice in meeting with Heads of the High Courts in the West Bank.

tion, Judge Abu Sharar called for giving the Prosecution its rights as stipulated in the law and to take its opinion in the acquittal cases taking into consideration that its opinion is not binding for the judge. Abu Sharar also called for monitoring investigation procedures at the Prosecution and asked the heads of courts to decide upon a mechanism to deal with this issue.

Abu Sharar called upon the heads of courts to play a proactive role in monitoring the work of judges and court employees whom they oversee through regular periodic meetings with court judges, and to inspect court facilities on

a daily basis and to check upon the registrars' files and to provide courts with their needs.

It should be mentioned that the new judicial year began September 1st, 2009 in all the West Bank courts, as 146 judges in the West Bank out of 190 judges in the West Bank and the Gaza Strip started working in two Appeal Courts and eight First Instance Courts as well as 12 Conciliation Courts all of them in the West Bank. However, the judges in Gaza working under the Supreme Judicial Council were not able to carry out their work in the courts due to the continued stripping of the authority of the Supreme Judicial Council.

The Supreme Justice Council calls for Accelerating the Appointment of an Undersecretary of Justice to ensure a Quorum for its Meetings

The Palestinian Supreme Judicial Council called for the need to accelerate the appointment of an undersecretary of the Ministry of Justice, June 15th, 2009 because the undersecretary according to the law of the Judicial Authority is a member of the Supreme Judicial Council. The Council has decided to approach both President Mahmoud Abbas (Abu Mazin) and Prime Minister Salam Fayyad so that the appointment of an Undersecretary of Justice could be accelerated as this is important in ensuring the regularity of the sessions of the Supreme Justice Council, and as it contributes towards reinforcing the relationship with the Ministry of Justice and the independence of

the Judicial Authority.

Chief Justice and Head of High Court Issa Abu Sharar stated that the quorum of the Council in compliance with Article (40/3) of the Judicial Authority Law does not convene except with the attendance of seven members of the nine council members. He also stated that the regularity of council meetings is facing serious difficulties as the Attorney General has not participated in meetings for more than eight months, as well as due to the vacant position of the Deputy Minister of Justice since the current Deputy has assumed new duties. This renders the convening of the council a very difficult matter and threatens to put its work

at risk. The council meetings are not complete except with the attendance of all the remaining members. If one member cannot attend, the council will not be able to convene and its meeting will be adjourned.

Abu Sharar stated, "The appointment of the Deputy Minister of Justice is not part of the jurisdiction of the Judicial Authority; however, and due to the impact this has on the work of the Judiciary, I hope that President Mahmoud Abbas and the Prime Minister will accelerate the appointment of the Undersecretary. I am also hopeful that the nominated undersecretary will be familiar with judicial matters." Abu Sharar added that the Supreme Judicial Council has

decided in its meeting of June 11, 2009 not to oppose the appointment of an undersecretary from amongst the judges so that the appointed undersecretary will be more able to contribute to the management of the Judiciary.

It is noteworthy that the Supreme judicial Council comprises in accordance with Article 2/37 of the Judicial Authority Law – nine members. They are: Head of High Court as President, the most senior Deputy of the High Court, as Vice President, two of the most senior High Court judges selected by a council of the High Court, the heads of the Jerusalem, Gaza and Ramallah Courts of Appeal, the Attorney General and the Deputy Minister of Justice.

"Spider Web": A film addressing the Role of the Judiciary in battling Corruption and Security Chaos

A crew of artists and actors filmed a Palestinian drama titled "Spider Web." The film highlights the period in which the law was absent and during which security chaos prevailed throughout all Palestinian areas. It also points out the role of the Palestinian Judiciary in confronting the problems and the crimes committed by some of the influential persons in the society and those outside the law. Film execution and production was carried out by TAM- Women, Media and Development in cooperation with the Netham Rule of Law Project.

Spider Web is a film directed by Rifat Adi and authored by Saleem Dabbour who wrote the script during two months. According to Dabbour, he relied on the change taking place in the Palestinian society during

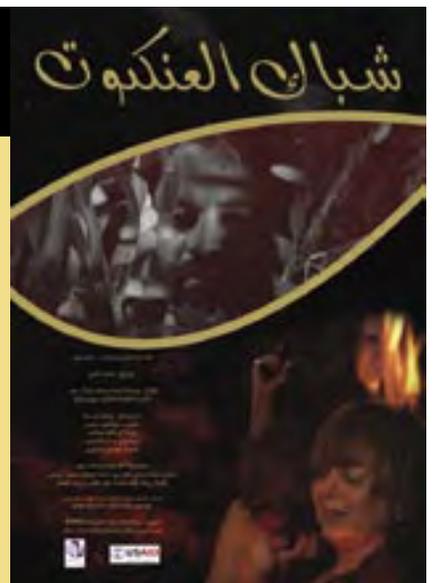
the past year; a change forward, however in need of more steps after the citizens felt more secure. He gave examples by indicating the outstanding improvement taking place in the issue of bouncing checks or those without balance following the legal procedures introduced by the Supreme Judicial Council. Forty-two actors, out of whom there were eleven main characters, participated in the film.

Dabbour explained that the title 'Spider Web' holds significant indicators and it represents a resounding scream calling for the need of treating everybody with equality before the law, regardless of old or young, places in society, rich or poor; a state of affairs that cannot be achieved except if rule of law prevailed and the Judiciary has its final word

in all the issues, so that justice prevails, and the oppressor is held accountable regardless of rank, positions and responsibilities. Consequently, all oppressors should be subject to the law; not the weak who do not have backing or protection.

The Supreme Judicial Council has shown great cooperation in this direction after having reviewed the text and expressed several procedural and legal observations.

It should be mentioned that a screening of the movie was organized by the Netham Project after iftar in Ramadan at the Grand Park Hotel in Ramallah on September 9, 2009 with the attendance of hundreds of key political figures, ministers, deputies, media personnel and representatives of civil society organizations.




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