

Eye On Justice



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Editorial

A Mistake and a Sin

It is understood that a civil servant or attorney has a commitment to perform his work and duties in accordance with professional standards and qualifications as required of those in a public post or the legal profession. Day-to-day errors may be made by any employee, but when a civil servant or attorney commits a grave mistake that oversteps the conduct considered as appropriate and falls into the category of what may be described as a grave professional mistake, then this civil servant or attorney must be held accountable and subjected to punitive measures according to the case. This is in addition to the right to compensation of the individual affected by the error.

The case deals with a chief prosecutor who holds a public post requiring him to enforce the law and guarantee rights and freedoms. Yet he committed a grave error: he appealed against a judicial sentence and claimed, contrary to the truth, the facts and the law, that the sentence was an acquittal of the defendant. Yet, the sentence clearly showed that the court had ruled that the defendant was guilty and imposed on him the appropriate punishment under the law.

The chief prosecutor had not even gone to the trouble of reading the sentence and drafted his appeal as if the sentence had been an acquittal. This is a violation of the law. He submitted an appeal to the Supreme Court and this led to further judicial proceedings in a case that was supposed to be closed.

In another incident, a legal practitioner filed a case in the Magistrate's Court calling for the annulment of a sentence issued by the Court of Cassation, whose sentences are final and irreversible. This fact is a basic judicial principle known by any professionally competent lawyer. The ignorance of the lawyer in this instance is a grave professional mistake and constitutes an unjustified attempt to obstruct the implementation of a legal decision. This lawyer must be held accountable and his license to practise should be suspended. The individual wronged in this case must be compensated.

The Palestinian Center for the Independence of the Judiciary and the Legal Profession - Musawa believes that the behavior of the chief prosecutor is a grave violation of the basic integrity of the profession and we await to see how the Attorney General will deal with the matter legally. Musawa also hopes that the Bar Association and its committees will investigate the attorney's error and impose punitive measures against him in accordance with the law. (See the details of the case in this edition.)

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Response from President

In response to an application by Musawa, the President issued instructions to the Fatwa and Legislation Council to halt an amendment to the law for the constitutional court, which included an article stating that the law shall be deemed effective after its publication.

The President also responded to Musawa on the inadmissibility of combining the posts of Justice Minister and Attorney General. The President issued a decree appointing the Assistant to the Attorney General, Abdul Ghani al-Eweweh, as the new Attorney General. Thus, the President affirmed his commitment to abide by the law.

Musawa calls on all officials in charge of the executive, legislative and judicial authorities and all civil servants to abide by the law.



Honoring Judges

On October 22, 2012, Musawa sent a memo to the High Judicial Council expressing strong denunciation of judges who accept honors whilst in office from non-judicial parties.

No legal grounds for refusal of public prosecution to register complaints

Musawa sent a written complaint to the Attorney General on July 3, 2012 regarding the illegal refusal of the public prosecution to register complaints from members of the public.

President responds to Musawa request

Musawa sent a written memo to President Abbas on November 11, 2012 requesting that he issue instructions to the Head of the Fatwa and Legislation Council to halt the publication of the law amending the law relating to the higher constitutional court.

Bar Association elections

Finally, after several delays, the Bar Association elections were held in the West Bank on April 7, 2012 using a system of proportional representation. Elections in the Gaza Strip are yet to take place.

The economic security of judges is the safety valve of society

Musawa sent a memo to Prime Minister Salam Fayyad regarding judicial salaries to point out the risks of treating the legal profession as a service facility. The memo called for the implementation of the agreement reached between the government and the Dutch Government to pay the salaries of judges and employees of the public prosecution.

End to work contract for Palestinian Official Gazette

Eye on Justice has discovered from informed sources in the Fatwa and Legislation Council that the Ministry of Justice ended its contract with the designer of the Palestinian Official Gazette. The designer was paid \$700 as a monthly salary from a grant offered to the Justice Ministry by the UNDP.

This might prevent the publication of the Official Gazette. Although the contract ended on January 1, 2013, the designer volunteered to design edition no. 98 of the Official Gazette free of charge, but he cannot continue to work without a salary.

The sources stated that ending the contract was unreasonable, especially since other employees were appointed to different jobs with less important tasks on the same project but receive much higher salaries.

A controversial judicial sentence

The Court of First Instance in its appeal capacity issued a ruling that there is no justification for overruling convictions made by a judge of the Magistrate's Court provided that it has legal authority.

Musawa report

In April 2012 Musawa issued the second report of the Legal Monitor to describe changes in the justice sector in Palestine during 2007-2011.

Published in both Arabic and English, the report covers 370 pages. Musawa also published a 90-page executive summary of the report in both Arabic and English.

Initiative to end judicial split

Eye on Justice has found out that Dr. Abdul Qader Jaradeh, a judge at the Gaza Court of First Instance, (who no longer practises as a lawyer due to the political split) announced a personal initiative for judges who are not currently working for this reason to return to their courts of law forthwith.

Whose responsibility is it?

Eye on Justice received a copy of a case filed by an attorney from the Magistrate's Court to annul a sentence issued by the Court of Cassation.

This grave error committed by the attorney violates the basic rules of litigation and Eye on Justice deems it necessary to make this case public.

A positive initiative

A member of the public prosecution requested that the Magistrate's Court acquit a defendant since there was insufficient evidence to indict him.

Musawa considers this as a positive step on the part of the public prosecution, which should act as an honest adversary in litigation.

Musawa urges the public prosecution to make this case public to build public confidence in its work.

Musawa succeeds in winning release of citizen detained illegally for more than 60 days

Musawa received a written response from the Attorney General stating that Bashir Abdul Aziz Shbeitah from Qalqilia had been released from detention by the general intelligence services on December 22, 2012.

Judicial Council responds to Musawa's request and issues a circular ending the convening of an appeals court with one judge only

On May 13, 2012, Musawa sent a memo to the High Judicial Council regarding the convening of the Jerusalem Appeals Court with only one judge.

The memo pointed out that this is a violation of the law and renders decisions nul and void.

Musawa pointed out in its memo that this practice has been taking place for some time now, as Musawa stated in its previous edition of Eye on Justice.

An explanation is required

Musawa sent a memo to Hasan al-Ouri, legal advisor to the President, demanding an explanation of the text of Article Three of the presidential decree establishing a Commission for NGO Affairs on December 25, 2012 as the text was very ambiguous.

The explanation should clarify the wording to avoid conflicting interpretations and maintain the independence and rights of civil society organizations.

Minimum wage of 1450 shekels per month; daily wage 65 Shekels; wage per hour is 8.5 shekels

Eye on Justice received a copy of the Cabinet decision defining the minimum wage.

Failure to implement court decisions

On June 1, 2012, Musawa sent a written memo to the legal advisor to the President regarding the refusal of the general intelligence apparatus to implement a judicial decision to release a detainee.

Call to cease detention of media staff

Musawa issued a statement calling for legal guarantees to be implemented as soon as possible to halt the detention of professional media staff.

Musawa joins Arab Network against corruption and becomes member of the technical committee for implementation of the UN agreement against corruption

Musawa has joined the Arab Anti-Corruption and Integrity Network; this network includes official bodies and civil society organizations, including the private sector and Arab parliaments. The Network has its headquarters in Beirut and is headed by Morocco during the current term.

In addition, the executive manager of Musawa, attorney Ibrahim Barghouthi, was selected to join the technical committee for self-assessment of Palestine and the implementation of the provisions of the UN Agreement against Corruption.

Musawa approval for committee report

On July 31, 2012, Musawa issued a position paper expressing approval of the report and its recommendations issued by the presidential investigation committee on the events that took place in Ramallah on June 30 and July 1, 2012. Musawa looks forward to seeing the recommendations implemented and hopes that all legislative, legal and judicial measures will be implemented to eradicate the violation of the rights of Palestinian citizens, especially the right to freedom of expression and political participation.

Musawa argued that Israeli governments have used political pluralism inside Israel to evade international commitments and it is time for Palestine to adopt political pluralism as a tool to guarantee the establishment of our national project and ensure sound and modern management of the conflict based on the law and rights of the Palestinian people.

Accreditation of specialized professional diploma program at Judicial Institute

Musawa received a copy of the letter sent by the head of the National Commission for Accreditation and Quality Education to the head of the Judicial Institute, Judge As'ad Mubarak, on July 1, 2012, confirming the accreditation of the specialized professional diploma at the Institute.

Appoint an attorney

Musawa received a complaint from Awni Hussein Khaled Hmeidat, a retired teacher from Nablus, who requested Musawa's assistance to claim his rights from the Ministry of Education.

Musawa believes that Hmeidat should appoint an attorney to represent him and file a case to claim his rights in accordance with the law if his claim is valid.

Keeping to the path

Attorney Ibrahim Barghouthi

The media reported a statement by the head of the Supreme Court and head of the High Judicial Council, Judge Fareed al-Jallad, that PM Salam Fayyad visited the headquarters of the High Judicial Council in order to end recent differences between the Council and the Justice Ministry. Fayyad was reported to have said that the executive authority completely supports the judicial process and is committed to ensuring that the judiciary has full authority to fulfill their role.

These statements brought to an end the serious disagreement that erupted between the Justice Minister and the Head of the High Judicial Council prompted by 15 proposals made by the Justice Minister in a document entitled "A Comprehensive Vision by the Justice Ministry on the Justice Sector."

It is ironic that the disagreement was resolved using a style of tribal reconciliation compatible with the culture of a patriarchal system and without any appropriate or consensual legal position towards the proposals of the Justice Minister. The fact that the matter was not properly resolved reflects a desire by the people in charge of the justice sector to retain this type of conflict management. Relations between the executive and the judicial authorities coincided with similar public mobilization in Morocco and Egypt, where the Egyptian president-elect retracted his decision to discharge the Attorney General and hundreds of judges took to the streets demanding guarantees of the independence of the judiciary.

While the proposals of the Justice Minister include some positive steps related to reform of the justice system, other proposals presented serious obstacles to the application of the rule of law.

The principle of separation of the three authorities of state ratified by the Palestinian legislator is a flexible and not concrete separation, meaning that the independence of the judiciary does not isolate it or make it a special entity above the law or free from any monitoring or accountability.

Reform of the judiciary is a national necessity that must not be delayed. Experience has shown that leaving this matter to the judicial administration carries risks and has failed to bring about the aspired goal.

Regardless of the controversy that accompanied the proposals of the Minister of Justice, the presentation of these ideas reflects a real desire for reform. We must heed this call for reform because if we do not, the current status quo will remain, those who reject reform will grow stronger and we will fall from the path of reform!

Important judicial statistics

Musawa has discovered that the productivity of the Court of Cassation in 2012 was no greater than 49%; the productivity of the Supreme Court was less than 45%; and the productivity of the Higher Court was less than 25% in requests and 0% in cases.

Court of Cassation ratifies important judicial principle

The Court of Cassation ratified an important judicial principle relating to questioning procedures and litigation in criminal cases. It ruled that questioning by the public prosecution does not have to take place in a specific location as long as the process reflects free will and reveals the truth. The public prosecution must provide the defendant with conditions free from influence or threat and must seek to ensure that questioning takes place at the public prosecution office in order to provide every guarantee of personal freedom.

Conflicting decisions on terms of reference of Fatwa and Legislation Council

Different governments have issued conflicting decisions on the terms of reference of the Fatwa and Legislation Council, although it is clear that the government realizes the importance of the work of the Council. Musawa believes that the Council has made significant progress in performing its duties, reviewing legislation and publishing the Official Gazette on a regular basis. The role of the Council should be consolidated and we hope that the government will clearly define its terms of reference in a manner that ensures total independence and neutrality.

Different court procedures in different districts??

In my capacity as a practising attorney in different districts, I have noticed that court procedures in a certain district may differ from those in another district. As attorneys working in different courts, we deem this matter to be of great importance. We strongly believe that the High Judicial Council must speed up work to apply rules in this matter and issue a circular of regulations and procedures to be posted publically in all courts in Palestine in order to unify standard procedures.

Musawa delegation signs memo of understanding with Swiss Constitutional Law Institute

A delegation from Musawa met with the Justice Minister in the Swiss state of Freiberg; the meeting was also attended by the Attorney General of Freiberg, the Chief of the Civil Judiciary Court and several officials in the Justice and Judiciary Department. The Musawa delegation made a three-day visit to Switzerland upon an invitation from the Federal Constitutional Law Institute. The visit concluded with a memo

of understanding signed by attorney Yaser Jabr, deputy head of the Musawa Board of Directors, and executive manager of Musawa, attorney Ibrahim Barghouthi. The memo included the provision of several places on Master's degree courses for Palestinian attorneys and legal professionals, giving Palestinians the opportunity to participate in short summer training courses and doctoral scholarships in law.

Attorney General: We aim to develop the work of the public prosecution

The Attorney General Abdul Ghani al-Eweweh has stated that he has formed an advisory council to diagnose the current status of the public prosecution, problems faced and mechanisms to develop their work. The council will hold monthly meetings and submit reports with the aim of establishing a public prosecution body that works with the highest degree of professionalism and transparency.

Head of High Judicial Council meets with Legal Advisor to President

The Head of the High Judicial Council, Judge Fareed al-Jallad, met on Sunday January 27, 2013 with the President's legal advisor Hasan al-Ouri. The meeting focused on the draft legal decisions transferred from the government to the President, in particular those to amend the law on the formation of regular courts, the law on criminal procedures and procedures to buy land allocated to establish court buildings in Toubas, Halhoul and Salfeet with support from the European Union. Al-Ouri informed Judge al-Jallad that he will examine all the decisions as soon as possible.

Musawa responds

Musawa received a request from 16 attorneys in the city of Tulkarem asking for a training course in litigation procedures before the Justice Supreme Court. Musawa responded and organized a four-day course which benefited 40 attorneys from northern districts.

A positive initiative that needs to be generalized

The Head of Ramallah Court of First Instance, Judge Ra'ed Asfour, issued an administrative decision to increase the number of traffic courses at Ramallah Magistrate's Court to eight courses a month instead of two and instructed the Information Technology Department at the High Judicial Council to record traffic tickets electronically from the beginning of 2013. The decision aims to facilitate the process for the public and reduce the number of cases in court. Musawa welcomes the decision and hopes for successful implementation on the ground.

A vision to alleviate the burdens of legal interns

By legal intern Intisar Bilal Daoud

As I was reading Eye on Justice, I noticed in edition 13 – March 2012, the headline "Coalition of Legal Interns" on forming a coalition and publishing a paper on the demands of trainee attorneys. Musawa stated then that the coalition should have approached the Bar Association with these demands before publishing the paper. I see Musawa as a mediator that seeks justice, so I present here a set of proposals that can alleviate the burdens faced by legal interns and I hope that you will refer it to the Bar Association.

Response to Justice & Law Magazine

Eye on Justice has heard from informed judicial sources that one of the bodies of the Justice Supreme Court has retracted measures it previously implemented in administrative cases in response to a comment by a legal expert published in edition 18 of Justice & Law Magazine by Musawa.

Proposals to develop work of execution departments

By attorney Suleiman Yaseen

The department for the execution of judgments is one of the most important departments since it is the dynamo of the court. This department faces a lot of pressure and officials and the High Judicial Council need to attend to its requirements. We need to develop the work of this department to maintain public confidence in the justice sector. I present to you a set of proposals that aim to improve the performance of this department.

Relations are defined by the law and code of conduct

The second half of 2012 witnessed an escalation of attacks against attorneys and heightened tension between the pillars of the justice system. The Bar Association was forced to undertake a series of protest measures, including strikes and refraining from appearance in court and other activities in order to get their legal demands heard. Judges, public prosecutors and police representatives submitted complaints against the attorneys accusing them of violating the provisions of the law and the code of conduct. Musawa believes that it is high time to put an end to all practices that undermine the dignity of those who work in the justice system and steps should be taken to enhance respect for the provisions of the law and the code of conduct. We also call on all official parties in the justice system to respond immediately to the professional demands of attorneys.

New board of Judges Association

The new board of the Judges Association was elected on April 7, 2012 with Abdallah Ghozlan as the head of the board and Eman Nasser Eddin as his deputy. The Association organized a legal seminar on the role of civil judges in proving evidence. The Association organized a reception to honor retiring judge Abdul Fattah Jibrini and another reception to welcome new judges at the Magistrate's Court. The Association arranged for five scholarships (paying only 25% of the costs) for Master's degrees at Al-Najah University but none of the judges applied for them or made use of them. The Association also obtained a full scholarship to study a Master's degree at al-Quds University.

Legal decision to amend Palestinian Child Law

On December 7, 2012 President Abbas issued a legal decision amending the Palestinian Child Law No. 7 of 2004 and transferred it to the Fatwa and Legislation Council for publication in the Official Gazette. Musawa was informed that the Fatwa and Legislation Council will publish this legal decision in edition 99 of the Official Gazette.

High Judicial Council restricts judicial contest to court employees

On August 2, 2012, the High Judicial Council posted an internal announcement for a judicial contest to appoint new magistrate's judges; the contest was limited to employees working in courts and departments of the Judicial Council.

The head of the Palestinian Bar Association, Hussein Shabaneh, sent a letter on August 6, 2012 to the Head of the Judicial Council demanding that the contest also include attorneys since it is a violation of the provisions of Article 16 of the Law of the Judicial Authority to deprive a large sector of people from participation in the competition. In addition, it is not in the interests of the judiciary to exclude qualified people from applying.

On August 9, 2012, Musawa sent a written memo to the High Judicial Council calling for attorneys to be given the opportunity to participate in the contest in accordance with Article 19 of the Law for the Judicial Authority, which defines those who may become judges and specifies that attorneys are included.

On August 22, 2012, Musawa received a written response from the Secretary General of the High Judicial Council, Hazem Idkedek, who said that the contest was intended to ensure fairness to employees working in the judicial authority who had been excluded from the previous contest.

Attacks on judges unacceptable whatever the reason

On August 2, 2012, Musawa sent a written memo to Dr. Ahmad Bahar, the First Deputy to the PLC Speaker in Gaza, regarding the attack on Judge Yousef Khalil Abu Latifeh and his family by members of Izziddin Qassam Brigades and the police in Gaza. In particular, Judge Abu Latifeh does not practise his judicial duties because of the political divisions.

According to Abu Latifeh, he was cutting down trees at the front of his home due to repeated incidents of armed men sitting under the trees and harassing members of his family. A group of ten armed men (known to him as members of the Izziddin Qassam Brigades) hit him with their fists, rifle butts and tree branches. They also attacked his sick wife. Abu Latifeh was taken to the police station where he was treated brutally by the police.

In its letter to Dr. Bahar, Musawa stated that this complaint requires investigation and the perpetrators should be punished, especially as the Izziddin Qassam Brigades do not operate under the umbrella of the police or the judicial police and have no authority to deal with civilians.

Musawa hopes that Dr. Bahar will ask the relevant parties to start an administrative investigation regarding the accusations against the police.

Monitoring of Court of Appeals over executive

By Attorney Ahmad Bahjat Bodeir – legal researcher – Gaza

There is no doubt that rapid procedures to decide on cases are required but there is also the need to ensure justice. Several months ago, the Court of Appeals in Gaza took a decision not to transfer cases relating to the executive from the execution department to the Court of Appeals in order to accelerate procedures. Although this decision was welcomed in many circles, it had a considerably negative impact on two basic principles related to appeals:

First: the oversight of the Court of Appeals of cases relating to the executive.

Second: the principle of appeal that raises awareness about the case.

Musawa believes that the Court of Appeals should review its decision and adhere to legal procedures in order to ensure justice, which lies in sound enforcement of the provisions of the law and not their violation.

Significant number of complaints

Musawa has been made aware that 121 complaints were submitted to the judicial inspection department (complaints against judges) in 2012, of which 105 cases were investigated.

There were 59 complaints against judges working in the north of the West Bank, 22 complaints in the southern West Bank, and 40 complaints in the central region of the West Bank.

Musawa is concerned about the implications posed by these figures, especially as there were valid complaints against 48 of the 160 judges who work in the magistrate's and appeals courts and courts of first instance.

Improvements to Tulkarem courts

On May 13, 2012, Musawa sent a memo to the Head of the Financial and Administrative Department at the High Judicial Council, Izzat al-Ramini, expressing deep concern about a memo sent to the Council (Musawa obtained a copy) signed by 100 attorneys. The memo stated the Magistrate's Court and court of first instance in Tulkarem lack the basic needs required for the judicial process, including chairs that are

unfit for use, including the chairs in the judges' rooms, and windows without curtains. The memo also pointed out that the court building itself is inappropriate. Three weeks later, Musawa received a written response from the Secretary General of the High Judicial Council explaining that all requirements had been met and the improvements called for had been implemented.

Circular to all Attorneys

The High Judicial Council informed Musawa that an internal circular was issued and posted in the hall of the Jerusalem Court of Appeals stipulating that the Court must convene with the presence of three judges and that the trial has to take place inside the court room.

Courts of Appeals sessions are void

Musawa sent a memo to the High Judicial Council regarding the convening of the Ramallah Court of Appeals with the presence of three seconded judges in violation of the law. As a result, attorneys refused to appear before the court in protest. In another incident, the Jerusalem Court of Appeals convened in the presence of one judge only. These incidents demonstrate that the organization of the judicial process is based on individual interpretations and administrative measures that violate the law. This delays cases and damages the credibility of the judicial authority. Musawa hopes that the High Judicial Council will take the necessary steps to put an end to individual interpretations that violate the law.

The Head of the High Judicial Council informed Musawa that the practice of the court convening in the presence of three seconded judges had been halted.

A citizen appeals to the Minister of Justice to claim his rights from a distinguished judge

A member of the public has claimed that a judge heard and ruled on a case in which he has served earlier in his capacity as an attorney and that he passed a sentence in favor of the defendant who had previously been his client.

Eye on Justice ascertained that the member of the public who filed the complaint claims to have tried and exhausted all legal means before finally appealing to the President, a strategy which did not yield results since the judge is very influential. The Justice Minister transferred the complaint to the Head of the High Judicial Council at the end of 2012 demanding that measures be implemented to preserve the independence of the judiciary. The judge involved in the case informed Musawa that the citizen's complaint was submitted to the High Judicial Council in 2006 and the Council put the judge under investigation and before a disciplinary council, where he was acquitted of all charges. The judge in question has stated that he intends to file a case against the member of the public for slander and will request compensation of 100,000 Jordanian dinars. One of the higher court judges informed Musawa that the disciplinary council did not acquit the judge but dismissed the case without even examining its facts, also adding that the disciplinary council was formed in violation of the law.

Musawa denounces the attack against women gathering in Gaza

On November 6, 2012, Musawa issued a press statement condemning the Gaza police for attacking a demonstration by women organized by the General Federation for Palestinian Women in front of the Palestinian Legislative Council in Gaza. Police from the Interior Ministry wearing civilian clothes attacked the women in a brutal manner.

Judge Mohammed Sedr passes away

Judge Mohammed Sedr, member of the High Judicial Council and judge in the higher court and member of the Court of Cassation, passed away on November 29, 2012.

Musawa extends condolences to the family of the judge and to the Council.

According to the provisions of the Law for the Judicial Authority, the general assembly of the higher court should elect one of its members to succeed Judge Sedr in the High Judicial Council but so far, the higher court has not elected a new member.

Attorneys Ala al-Bakri, Maher Barieh, Ahmad Zakarneh and Farah al-Barghouthi passed away

Musawa extends condolences to the families of the four attorneys.

Work term of secretary of High Judicial Council and head of courts administration extended for three additional months

Musawa has been informed that the High Judicial Council decided to extend the work contract of the Council Secretary, Judge Hazem Idkedek, for an additional three months up to the end of March. The Council also decided to extend the work contract of the head of court administration Judge Izzat al-Ramini for the same period.

Musawa believes that in order to inject new blood and develop capacity, certain posts must not be limited to specific people and their term must not extend beyond the period stipulated by the law.

Musawa prepares draft law for administration of judiciary and draft amendment to law of criminal procedures

Musawa published a special booklet under the title "Draft for the Administration of Judiciary Law of 2013". The 40-page booklet includes the proposed draft law with explanatory notes. The aim of the draft law is to meet the need of the Palestinian legislative system for a modern law that organizes the administration of the judiciary.

Musawa previously published a special booklet on "Draft law of 2103 amending the Law of Criminal Procedures No. (3) of 2001". This was submitted to the relevant political, legislative and judicial parties. The 103-page booklet aims to introduce core amendments to the law in a manner that meets the need for justice, preserves the rights of citizens, and accelerates litigation procedures.

Musawa received a letter from the office of PLC members in Ramallah regarding the draft law to amend the Law of Criminal Procedures. The letter praised the proposals of Musawa and expressed support for the amendments, provided that the proposals are examined thoroughly by experts along with the professional team that conducted the study.

Draft legal decisions to amend the Law on Forming of Regular Courts, Law of Standards in Civil and Commercial Courts and Law of Criminal Procedures

Musawa found out that at the end of 2012, the Cabinet transferred three draft legal decisions to the President. The national higher group for the legislative plan of the government called for a workshop to discuss the three drafts. The workshop took place on December 5, 2012 with the participation of 40 legal figures, including representatives of the High Judicial Council, the Justice Ministry, the Palestinian Bar Association, the Palestinian Judges' Association, attorneys, law professors, and representatives of civil society organizations and Musawa.

The majority of participants were opposed to the use of legal decisions to amend laws. They decided to form a committee comprised of a representative of the higher national group for the legislative plan, a representative of the High Judicial Council

and Musawa as representative of civil society organizations in order to redraft the decisions in line with suggestions made in the workshop if the government insists on submitting them to the President. The national higher group introduced the amendments and submitted them to the President on the grounds that it was not possible to hold a meeting of the committee. The general coordinator of the national higher group of the legislative plan in the government Fawwaz Abu Zir, Assistant to the Cabinet Chief, affirmed to Musawa that all comments by participants had been taken into consideration and the final versions of the decisions had been amended accordingly. He promised to send copies of the final versions to the members of the committee.

Cabinet ratifies the code of conduct and ethics for public office

Musawa is informed that the Cabinet ratified the code of conduct and ethics for public office in its 23rd session on October 23, 2012; the 18-page code was transferred to the Fatwa and Legislation Council for publication in the Official Gazette number 98. The various ministries were provided with copies of the code, which took more than one year to ratify.

The code of conduct and ethics includes information on the al-Quds Award granted to a distinguished employee who exerts efforts against corruption and abides by principles of integrity and transparency in the performance of their duties.

Eye on Justice also heard that the Cabinet issued an amendment to the guidelines of the Judicial Training Institute based on a proposal made by the board of the Institute.

Three decrees to appoint assistants to Attorney General

Musawa has been informed that the President issued three decrees to appoint assistants to the Attorney General. The assistants are chief prosecutor Dr. Ahmad Barrak, chief prosecutor against corruption Akram al-Khatib and a member of the judicial inspection department, Judge Ashraf Erekat. Thus, the number of assistants to the Attorney General becomes five, including Munir al-Aqaba and Tareq al-Bheis, both from the Gaza Strip.

The three decrees prompted various reactions. Chief prosecutor Khaled Awwad decided to appeal to the judiciary because he believes that he has a right to this post by seniority as he holds the post of prosecutor. The administration rejected the claim and stated that the appointment is not based on seniority. Awwad informed Musawa that he sent a written memo to the President's legal advisor, Hasan al-Ouri, and to Minister Ali Mhanna but he did not receive any response.

The decrees also raised issues of timing since Palestine is in a severe financial crisis, described by the PM as bankruptcy, and the President had earlier decided to halt promotions in public posts, including the judiciary, for budgetary reasons.

Judiciary ratifies emergency plan for court employees

Eye on Justice has been told that the High Judicial Council has adopted an emergency plan for court employees in light of the financial crisis. This includes the distribution of work in shifts so that employees perform fewer hours. The plan followed the failure to pay the salaries of judges, members of the public prosecution and judicial authority employees. The Head of the High Judicial Council informed Musawa that the plan maintained a reasonable administrative balance and did not affect the work of the judicial authority.

An explanation is needed!

Musawa sent a letter to the President's legal advisor demanding an explanation of the decree establishing a commission for NGO Affairs.

The letter explained: "Musawa received a copy of the presidential decree on the establishment of the commission for NGO Affairs and the decree transferring Mr. Hasan Ahmad Mohammed al-Einen "Sultan Abul Einen" from his post as advisor to the President of the PNA for NGO Affairs to the post of Head of the NGO Affairs Commission. We thoroughly examined Article Three of the decree, which stipulates that the commission aims to coordinate and organize work between Palestinian and foreign NGOs and the various government bodies on the basis of integration, participation and transparency in planning and implementation of the national plan for Palestinian society. The text was vague and unclear and we believe that it requires further explanation, especially the terms "coordinate and organize work" and definitions of the various government bodies."

Musawa received a reply from the President's legal advisor stating: "Article Three of the decree does not affect the legal status of any of the NGOs registered according to the law and procedures and does not interfere in the jurisdictions of the various ministries. The commission aims to coordinate and organize work through setting up strategic national plans for the sector in which these organizations work. The commission will work in partnership with civil society organizations and in coordination with the planning ministry to work on allowing the non-governmental sector to participate in setting up general plans for the ministries and the government. The commission aims to create harmony and real partnership between NGOs and government bodies in order to best serve the Palestinian public and society. The institution of the President, which is the highest Palestinian administrative and political body, coordinates permanently with the cabinet and the various ministries in order to enforce the law and achieve transparency. The commission will answer to the President and will ensure that civil society organizations and ministries achieve Palestinian goals. We express gratitude to your organization for its dedication to the rule of law translated into real action on the ground and protection for the rights of the public."

Salaries in the justice sector

On November 2012, the Head of the High Judicial Authority sent a letter to the Minister of Finance regarding funding from the Dutch government to cover the salaries of judges and employees in the judiciary and the justice sector.

Musawa has learned that Finance Minister Dr. Nabil Qasis promised the head of the High Judicial Council that he would deal with the matter. Sources told Eye on Justice that the Finance Ministry paid salaries owing for November and the full salary for December to some employees in the justice sector but excluded others, including the head of the High Judicial Council, several judges and court employees.

Amendment to law on prisoners and released prisoners

President Abbas issued a legal decision amending the law on prisoners and released prisoners on January 8, 2013. The decision will become effective upon publication in the Official Gazette. The decision is intended to define the rights of prisoners and released prisoners.

Storm stops work in Nablus courts

Eye on Justice was informed by an official source that the recent heavy rain led to work being halted at the Court of First Instance and the Magistrate's Court in Nablus; rainwater two meters high damaged the electric generators and an electric cable that feeds the courts building. The Head of the High Judicial Council contacted Nablus Municipality and the relevant official bodies demanding prompt repairs so the courts can resume work.

Musawa believes that the slow response by the authorities reflects an outdated view of the importance of judicial work.

Rights of working women

Musawa was invited to attend a meeting with a ministerial committee to discuss the means to implement a plan to protect the rights of working women.

The ministerial committee consists of representatives from the Social Affairs Ministry, Women's Affairs Ministry, Justice Ministry and Labor Ministry. The letter sent to Musawa explained that the government will set a minimum wage for male and female workers on an equal basis and will publish it as binding on all official and private bodies. The committee also agreed to demands to increase the budget for labor inspection officers at the Labor Ministry.

Appeal to the President

Musawa received a written request from the family of prisoner Ziad Saleh al-Absi from Hebron demanding intervention to secure his release. The three-page request explained the prisoner's conditions in prison and during the trial. The request included claims that are outside the jurisdiction of Musawa. Since the sentence against the prisoner was issued by the military judiciary and the matter is now before the President, Musawa believes that the family can send an appeal to the President requesting that he reconsider the sentence and release him. The procedures for re-trial in this case come under the authorities of the President.

Unified Arab Judicial Inspection Chart

A meeting will be held in Beirut on March 4-6, 2013, for Arab judicial inspection departments in order to ratify standard guidelines for judicial inspections. Palestine will be represented at this meeting by the Head of the Judicial Inspection Department, Judge Fathi Abu Srour, and by Judge Mohammed Msallam.

Correct Decision

On April 24, 2012, the Cabinet in its 123rd session issued a decision to stop the requirement for a security check as a precondition for employment in the civil service.

Also, Eye on Justice has found out that the Cabinet is seriously considering proposals to make legislative amendments that annul the detention of people working in the media. Musawa believes that the Cabinet has taken the correct decision with regard to security checks and hopes that measures will be implemented to stop media staff from being detained.

Musawa adopts three cases as part of its legal assistance program

In line with its program of legal assistance to defend litigators who cannot afford legal expenses, Musawa adopted three cases filed in the Supreme Higher Court pertaining to civil servants. The legal assistance program at Musawa is also applicable to members of the public who require legal assistance.

Formation of Higher Constitutional Court

On September 10, 2012, Musawa sent a letter to President Abbas pertaining to the formation of the Higher Constitutional Court as follows: "Musawa has heard that you are about to issue a decree on the formation of the Higher Constitutional Court and that efforts are now focus on selecting the head of this court and its members. We believe that the timing of this matter is inappropriate. The majority of legal experts confirm that what distinguishes this court is that it combines both political and legal aspects. Therefore, community reconciliation and national consensus on the judges who are members in this court is a prerequisite. We believe that the formation of a Higher Constitutional Court in a state under occupation is not an urgent matter. Also, our state lacks independent and competent judges who can become members of this court and the financial costs of establishing such a court are considerable. Arab countries which are similar to Palestine in terms of size and population and which are independent have not formed yet a constitutional court but have commissioned the Court of Cassation to undertake this task, as in the case of Kuwait and Jordan. Our Basic Law commissions this task to the Higher Court until conditions are suitable to form such a court. The formation of a higher constitutional court should be based on broad community consensus and national political agreement, in addition to community dialogue: none of these events have yet occurred. In light of the current situation, we urge Your Excellency to take your time on this matter until conditions are appropriate and all requirements have been met.

Bar Association Memo to the High Judicial Council

In an attempt to improve relations between the Bar Association and the High Judicial Council, the Bar Association sent a memo to the Head of the High Judicial Council, Judge Fareed al-Jallad, on May 13, 2012, to highlight the negative practices of some judges. The memo stated that some judges do not show up on time for their official working hours and this obstructs the work of courts and attorneys, as well as having a negative impact on the interests of litigators. The memo also explained that judges do not wear the official garments and this is detrimental to the reputation and standing of the profession. The memo stated that some judges socialize with litigators and attorneys in coffee shops and public places or use inappropriate language during court sessions. The Bar Association said that it cannot remain silent about the fact that several judges give in to the dictates of members of the public prosecution and the security services, in addition to intervention by members of the High Judicial Council and the Higher Court in the decisions of judges. Serious attention must be given to these matters and deterrent measures put in place. The memo also pointed out that litigation procedures in the Court of Cassation take more than three years. In addition, most courts lack public facilities for the use of attorneys and citizens.

Musawa has learned that dialogue took place between the Bar Association and the High Judicial Council resulting in a decision to form a committee to examine the demands of the Bar Association and investigate the issues referred to in the memo.

Is It True?

Is it true that the President's office requested in writing from the Head of the High Judicial Council to nominate a specific judge as assistant to the Attorney General and that the Council postponed the nomination until the judge concerned submitted a request to this effect to the Council and the nomination took place with a majority by the members of the High Judicial Council?

Secretary of the High Judicial Council Judge Hazem Idkedek:

The nomination came upon a request from the Attorney General with the approval of the judge.

An informed judicial source said that the facts referred to in the question were correct.

Is it true that a judge shouted at an attorney and expelled him from the courtroom for taking a paper tissue from the clerk's desk and that the attorney filed a complaint, which was followed by a counter-complaint by the judge?

Secretary of the High Judicial Council Judge Hazem Idkedek:

It did not take place as you described. There was a problem and it was resolved.

Is it true that a female judge rules on traffic tickets incurred by her relatives and imposes reduced fines on them?

Secretary of the High Judicial Council Judge Hazem Idkedek:

I don't know anything about this matter.

Is it true that the High Judicial Council transferred several cases submitted to the Higher Court to the Deputy Head of the High Judicial Council for his opinion and several judges then discharged themselves from the cases as they considered this step to be interference in their work and an attempt to influence their decisions?

Secretary of the High Judicial Council Judge Hazem Idkedek:

The nomination came upon a request from the Attorney General and the approval of the judge.

A judge in the Higher Court confirmed that the events in the question were true.

Is it true that a municipality filed charges against a civil society organization for not having a professional business license and that the Municipalities Court is hearing the case?

Secretary of the High Judicial Council Judge Hazem Idkedek:

When a case is referred to a court, the court must hear the case and issue its decision in accordance with the law.

Is it true that attorneys protested to the Head of the High Judicial Council regarding the location of the Magistrate's Court in Toubas because the court is located in a residential building very close to the main road and when the police transport a defendant, the road has to be closed. The letter of protest was submitted on January 4, 2013 during an inspection visit by the Head of the High Judicial Council to the court in Toubas?

Secretary of the High Judicial Council Judge Hazem Idkedek:

The council is working on allocating a plot of land to build a court room in Toubas.

Is it true that a large number of judges were sent to participate in a training program in Morocco and they were surprised to find that there was no training program?

Secretary of the High Judicial Council Judge Hazem Idkedek:

The visit was to complement an earlier visit to develop the judicial training curriculum.

Is it true that some students from the Judicial Training Institute who were training at the offices of the Magistrate's Court signed the sworn testimonies of members of the public instead of the judges?

Secretary of the High Judicial Council Judge Hazem Idkedek:

I don't know anything about this case.

Is it true that one case has been unresolved in the judicial system for the past 21 years? And is it true that the claimant commented on the latest postponement of this case by saying "Ok, I can celebrate the silver jubilee of my case"?

Secretary of the High Judicial Council Judge Hazem Idkedek:

I don't know anything about this case.

Is it true that shouting and a heated argument erupted between a judge and a public prosecutor?

Secretary of the High Judicial Council Judge Hazem Idkedek:

I don't know anything about this case.

Is it true that a case filed by a judge was postponed by the Higher Court more than six times in a row because there is a judges' commission quorum?

Secretary of the High Judicial Council Judge Hazem Idkedek:

There is no quorum because the majority of the judges cannot look into the case by law.

The attorney appointed to this case confirmed what was described in the question.

Is it true that a judge responded to a woman who asked about the time taken to hear her case by shouting at her and ordering her to get out?

Secretary of the High Judicial Council Judge Hazem Idkedek:

I don't know about this but I can confirm that the people attending courts receive appropriate treatment.

An attorney confirmed to Musawa the event described in the question was true.

Is it true that a court of first instance in its appeal capacity set a date for a hearing to look into a case which had been decided by the Court of Cassation three years ago? And is it true that the case was filed in 1998 and is still being looked into by the court of first instance until now?

Secretary of the High Judicial Council Judge Hazem Idkedek:

The claimant must pursue this matter.

The attorney appointed to the case informed Musawa that he had sent a memo to the Minister of Justice and the High Judicial Council.

Is it true that an attorney accused a judge of abusing his authority and of forging official papers and that the judge filed a complaint against the attorney for slander and violating the code of ethics of the profession?

Secretary of the High Judicial Council Judge Hazem Idkedek:

It is true and the case is being heard.

Is it true that a female employee at the execution office slapped a citizen on the face in public and that the woman pushed the employee and hit her on her leg?

Secretary of the High Judicial Council Judge Hazem Idkedek:

We have a complaint saying that the woman started the attack and the case is being heard.

Is it true that a judge in the execution office transferred ownership of

a plot of land which was not owned by either party in the case and decided to grant its ownership to another person?

Secretary of the High Judicial Council Judge Hazem Idkedek:

It is true and the matter was transferred to the judicial inspection department.

Is it true that a female judge does not wear the official uniform?

Secretary of the High Judicial Council Judge Hazem Idkedek:

It is true.

Is it true that an agreement has been reached between the public prosecution and the High Judicial Council to form a unified judicial inspection department and they are currently drafting a new judicial inspection guide on the basis of the agreement?

Secretary of the High Judicial Council Judge Hazem Idkedek:

I don't know anything about this case.

A judicial inspection judge confirmed to Musawa that this is correct and that the department is working on a unified inspection guide.

The Attorney General Abdul Ghani al-Ewewi said there is an understanding on this matter but it requires follow up.

Is it true that the European grant allocated to pay the salaries of employees in the official justice system excluded judges and employees appointed after 2009 and excluded those who assumed the post of minister or deputy minister?

Secretary of the High Judicial Council Judge Hazem Idkedek:

those benefiting from the grant are those whose names are listed in the salary tables of October 2009.

Is it true that the Judicial Training Institute still seeks the assistance of attorneys in its training program?

One of the judge trainers confirmed that this is true.

The editors of Eye on Justice have made every effort to ensure that responses given by officials working in the justice system are included verbatim without any alterations. Some questions were not printed following assurances from the High Judicial Council and relevant parties that the issues in question would not be repeated. The editors also refrained from publishing other questions that might give rise to personal embarrassment and misunderstandings.



During Printing

Eye on Justice discovered that following the failure of the Higher Court General Assembly to select a member to the High Judicial Council to succeed the late Judge Mohammed Seder, the High Judicial Council issued a decision on January 23, 2013 stipulating that Judge As'ad Mubarak should attend the Council meetings.

This decision was justified on the grounds that the Council had been forced to invite Judge As'ad Mubarak to attend the Council meetings after the Higher Court had called for a meeting three times in a row but there was no quorum.

MUSAWA in Brief

An independent and non-government civil association established on 18/3/2002 under an initiative by former lawyers, judges and social personalities undertaking the responsibility for dedicating efforts to enhance guarantees for the independence of the judiciary and legal profession from the legislative, methodological and behavioral point of view by monitoring, documenting and addressing all social, cultural, political, economic and legislative obstacles that may prevent proper

Invitation

Musawa calls upon all those working in the legal profession to contribute their legal opinions and express their viewpoints freely in writing to us. Musawa will publish all your input in Eye on Justice and Justice and Law Magazine.



MUSAWA

Palestinian Center for the Independence of the Judiciary & the Legal Profession

Notice from the Programs Department

Dear members of the public,

In order to guarantee the rights of the Palestinian public and ensure a reputable judiciary that promotes and protects justice and equality, the programs department at Musawa will continue to publish Eye on Justice and Justice and Law Magazine to draw attention to all issues related to the justice system.

Musawa is always ready to receive any ideas, news items, articles, research studies or comments related to the independence, integrity and professional performance of the justice system.

MUSAWA

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