**The Struggle for the Independence of the Judiciary in the Palestinian Authority**

**Haim Sandberg[[1]](#footnote-1)**

Only few are aware that within the Palestinian Authority, the judiciary is fighting for its independence. The challenges it faces are significant. The president of the Palestinian Authority has significant control over the process of judges’ appointment and retirement. Since Hamas assumed power in Gaza, the Palestinian Authority’s legislative powers have also passed to the Palestinian Authority’s president, and he has been using them to influence the independence of the judiciary. All of this undermines the Palestinian judiciary’s ability to be independent, to make judgments without fear, and to protect civil liberties. Given these problematic underlying conditions, it may be surprising to discover that the Palestinian Authority’s judiciary is fighting for its independence. In fact, the boldness reflected in some of its judgments, as well as other measures taken by its judges, may give rise to some amazement.

This article is intended to paint a picture of the struggle for independence conducted by the judiciary within the Palestinian Authority during the tenure of the current Palestinian Authority president – Mahmoud Abbas (“Abu Mazen”), who came to power in 2004. The paper will focus on analysis of the struggle for independence conducted during said period by the Palestinian Supreme Court, which was the highest court of the Palestinian judiciary, until 2016, when the Constitutional Court was established. This article will the newly-created Constitutional Court, served as a tool for the Palestinian Authority’s president to strengthen his grip on the administration of justice. The analysis will be based on judgments issued by these two courts, Palestinian records, reports in the Palestinian press and online media, and reports and memoranda issued by Palestinian Authority bodies and human rights organizations, thereby revealing a picture based on Arabic language sources. Based on these sources, which are visible to the public, but not truly accessible to the non-Arabic-speaking, it will be possible to obtain an impression of the status of the senior courts within the Palestinian Authority. A disturbing conclusion emerges from this article, pointing to the weakness of the Palestinian judiciary and serving as a warning of the dangers that lie ahead.

**Introduction; A. Independence of the Palestinian Judiciary – Historical and Normative Background; B. The Struggle for the Judiciary’s Independence During Mahmoud Abbas’s Tenure – In Practical Terms; 1. The Tragic End to the Tenure of President As-Sourani (2005); 2. The First Abu Sharar Term – The Court in Service of the President (2005– 2009); 3. Farid Jallad’s Tenure: The Quiet Preceding the Storm (2009–2014); 4. The Rise and Fall of Ali Mhanna: Open Warfare (2014–2016); 5. Sami Sarsour’s Struggles for Independence (2016); 6. The Controversy Over the Purpose of Establishing the Constitutional Court; 7. The period of Imad Saleem Saad and the Legal Sector Development Committee (2016– 2019); 8. A Time for Revenge – Replacing the Supreme Judicial Council and Forcing Senior Judges into Retirement (2019– 2021); 9. Establishment of a new Permanent Judicial Council and Establishment of Administrative Courts (2021); 10. The Constitutional Court – Is it an Independent Court?; Summary**.

**Introduction**

Only few are aware that within the Palestinian Authority (PA), there is a judiciary that is fighting for its independence. The challenges it faces are considerable. The president of the Palestinian Authority, Mahmoud Abbas (“Abu Mazen”), in power since 2004, has significant control over the process of appointing judges and forcing them to retire. Since Hamas came to power in Gaza in 2007, all the PA’s legislative powers have also passed to the Palestinian Authority’s president, and he has been using them to influence the independence of the Palestinian Authority’s judiciary. In addition, the Palestinian Authority has no long-standing tradition of democracy, and the Palestinian Authority’s security apparatus, both overt and covert, have forces that would not be out of place in totalitarian states. All of which undermines the Palestinian judiciary’s ability to be independent, to pass judgments without fear, and to protect civil liberties.

Given these challenging conditions, it may be surprising to discover that the Palestinian judiciary is nonetheless fighting for its independence. The boldness reflected in some of its judgments, as well as other measures employed by its judges, may give surprise many Western observers. One such example is the Palestinian Supreme Court’s rejection of the appointment of Abu Mazen’s choice for Chief Justice of the Supreme Court, a move that certainly demonstrated great courage. This boldness does not stem from the power of the purse or the sword, neither of which are within the purview of any judicial authority. Indeed, its origins are a phenomenon worthy of examination. This article strives to shed light on the struggles for independence by the Palestinian judiciary during the tenure of the current president of the Palestinian Authority – Mahmoud Abbas (“Abu Mazen”), ruling the Palestinian Authority since 2004. This paper analyzes the struggle for independence conducted during this period by the Palestinian Supreme Court, which until 2016 was the highest court of the Palestinian judiciary, when the Constitutional Court was established. This article will demonstrate that the newly-created Constitutional Court served as a tool for the Palestinian Authority’s president to strengthen his grip on the administration of justice. The article will be based on the judgments of these two courts, Palestinian records, reports in the Palestinian press and online media, and reports and memoranda issued by Palestinian Authority entities and human rights organizations thereby revealing a picture based on Arabic language sources. Based on these sources, which are visible to the public, but not truly accessible to the non-Arabic-speaking, it will be possible to obtain an impression of the status of the senior courts within the Palestinian Authority. A disturbing conclusion emerges from this article, pointing to the weakness of the Palestinian judiciary and serving as a warning of the dangers that lie ahead.

The structure of the article will be as follows: In the first chapter, I will present the historical and normative background of the independence of the Palestinian judiciary. In the second main chapter of the article, I will review the struggles for independence waged by the Palestinian Supreme Court under the respective tenures of the different Chief Justices of the Supreme Court against President Abbas’s repeated attempts to undermine judicial independence. I will also address the role of the Constitutional Court in these struggles since 2016, followed by my conclusions.

**A. The Independence of the Palestinian Judiciary – Historical and Normative Background**

The ambition to establish an independent judiciary has accompanied the brief history of Palestinian independence since its inception. The 1988 Palestinian Declaration of Independence states that Palestine will have an independent judiciary,[[2]](#footnote-2) as was stipulated by the Oslo Accords,[[3]](#footnote-3) the Gaza and Jericho Agreements,[[4]](#footnote-4) and the 1995 Interim Agreements between Israel and the Palestine Liberation Organization.[[5]](#footnote-5) Similarly, the early drafts of the Palestinian Basic Law, designed to become the Palestinian Constitution, mention the establishment of an independent judiciary subject to no authority other than the law, whose judges are appointed for indefinite terms and cannot be dismissed, and which is empowered to judicially review any body or entity. However, those drafts left the power to appoint judges in the hands of the president, pursuant to a recommendation by a judicial council.[[6]](#footnote-6) In an article from 1994, the authors accurately assessed that, “To a significant extent, the vitality of the rights provided in the new Palestinian charter will rest on the strength and quality of the judiciary.”[[7]](#footnote-7)

The importance of an independent judiciary to the new Authority is also reflected in the provisions of the final version of the Palestinian Basic Law, enacted in 2003, and which has since been considered to serve as the Palestinian Authority’s constitution.[[8]](#footnote-8) The inspiration for the wording of this law came mainly from the constitutions of other Arab nations, Egypt in particular, and therefore, its general terms regarding judicial independence left the executive branch with a considerable degree of practical control over the judiciary.[[9]](#footnote-9) The Basic Law gives clear expression to the principles underlying the operation of an independent judiciary, including the separation of powers (Article 2), the rule of law, the subordination of all authorities and individuals to the law (Article 6) and equality before the law and the judiciary (Article 9). It also explicitly, and in detail, protects a wide range of human rights and social rights (Chapter Two, Articles 9–33). It guarantees every Palestinian the right of access to the courts and prohibits legislation that gives an administrative decision or action immunity from judicial oversight (Article 30). The Sixth Chapter (Articles 97–109) is entirely devoted to the judiciary (السلطة القضائية) and the public prosecutor’s office (النيابة العامة), both of which are considered to be two branches of a single system. It also stated that the judiciary is independent (Article 97), as well as the judges (Article 98). However, the details and extent of such independence were left for the legislature’s determination. It was thus determined that the courts’ method of establishment, and powers, without exception, as well as the power to dismiss judges, would be determined by law (Articles 97, 102, 104). The Basic Law also calls for the establishment of a Supreme Judicial Council (مجلس اعلى للقضاء), the composition and powers of which shall be determined by law, which must be consulted with regard to any bill concerning the judicial system (Article 100). As I will show, because no elections have been held in the Palestinian Authority since 2006, President Abbas has effectively assumed the power to legislate,[[10]](#footnote-10) thereby enabling him to undermine the independence of the judiciary by means of the legislative powers he has assumed. These circumstances upset the system of checks and balances created under the Basic Law, and has indeed led to infringements of judicial freedom, driving the Palestinian justice system to try to assert its independence in face of these threats.[[11]](#footnote-11)

The independence of the judiciary is also enshrined in the 2002 Judiciary Law stating that “The judiciary is independent, and interference in the judicial system, or in matters of justice, is prohibited” (S. 1), because “the judges are independent, and are subject to no authority other than the law” (S. 2). Therefore, it was determined that the judiciary would have an independent budget (S. 3). This law also prescribed judges’ salaries and pensions (S. 32), set their term of office until the age of 70 (S. 34), and restricted the possibility of dismissing them only to exceptional cases prescribed within the law (S. 27). Furthermore, the law established a Supreme Judicial Council, composed of a vast majority of judges, headed by the Chief Justice of the Supreme Court, with its members including the most senior Vice-President of the Supreme Court, two of the most senior justices of the Supreme Court, elected by the Supreme Court, the heads of the Courts of Appeal in Jerusalem, Gaza, and Ramallah, the Attorney General, and a representative of the Ministry of Justice (S. 37). The Council was granted broad powers to supervise the workings of the judiciary (Chapter 2), and disciplinary proceedings (Chapters 3 and 4), as well as extensive powers related to issuing recommendations on appointments, promotions, or dismissals of judges (Title III). However, the authority to appoint judges at all levels (or to promote them or force them into retirement) remained in the hands of the president of the Palestinian Authority, despite being made conditional on the receipt of a recommendation or “placement” (*Tansiv* - تنسيب) from the Supreme Judicial Council.[[12]](#footnote-12) Thus, according to Palestinian legislation, the Supreme Judicial Council is the internal body that controls the judiciary, and the need to receive its recommendation for “placement” is the tool by which the internal independence of the judiciary is supposed to be maintained. It is no wonder, then, that in recent years, the focus of the struggle for the independence of the judiciary has been the question of controlling the appointment of members to the Supreme Judicial Council, headed by the Chief Justice of the Supreme Court, as well as the status of said “placement” of judges on behalf of the Supreme Judicial Council. Is it solely a recommendation, or is the president of the PA obliged to act in accordance with it? These questions were eventually submitted to the courts for a judicial decision, thereby forcing a difficult dilemma on the judicial system – to fight for its independence and risk open confrontation with an autocratic ruler, or to willingly surrender to the undermining of its independence. As I will demonstrate in the next chapter, the Supreme Court bravely chose the first option, but it is doubtful whether this course, which caused significant counter-reactions, actually succeeded in protecting the judiciary’s independence.

The Palestinian Basic Law called for the establishment, by special law, of the Supreme Constitutional Court, which, as is customary in Arab and European countries, would have the power to rule on the constitutionally of laws, regulations, and decrees, interpret basic laws and legislation, and settle jurisdictional disputes between judicial authorities and administrative bodies with judicial powers (S. 103). The Basic Law also stipulates that until the establishment of the Supreme Constitutional Court, the Supreme Court (established before the enactment of the Basic Law) would temporarily carry out all tasks assigned to the Administrative Courts and the Constitutional Court, even though it must refrain from interfering with the authority of any other judicial entity acting in accordance with the law (S. 104). This provision temporarily entrusted the Supreme Court with the tasks of constitutional and administrative review of administrative acts and legislation. In accordance with the provisions of the Basic Law, the Constitutional Court Law was enacted in 2006.[[13]](#footnote-13) The authority to establish the court was entrusted to the president of the Palestinian Authority, subject to consultation (*Tash’ur* - تشاور) with the Supreme Judicial Council, but the authority to appoint its judges after its establishment remained in the hands of the president of the Palestinian Authority, based on the idea of “placement” (*Tansiv* - تنسيب) by the General Assembly (الجمعية العامة) of Judges of the Constitutional Court, to be established (S. 5). The Supreme Constitutional Court was finally established only in 2016, on the tenth anniversary of the enactment of the law that enabled its establishment. This new Supreme Constitutional Court actually served to undermine the independence of the judiciary, both by its position as a more senior judicial entity above the Supreme Court and the judicial system as a whole, and by depriving the ordinary judiciary’s Supreme Judicial Council, chaired by the Chief Justice of the Supreme Court, of the power to influence, if only by exercising the power to recommend, the composition of the Constitutional Court. The composition of the two bodies is controlled by the president of the Palestinian Authority, and he can use this authority to influence their independence. As I will demonstrate, the establishment of the Supreme Constitutional Court was a tool employed by the president to strengthen his control over the judiciary. The very establishment, composition, and the question of the relationship between that court’s authority and the authority of the Supreme Court, have been, and still are, the focus of the Palestinian Authority’s judiciary’s struggle for independence.

Therefore, the two main weaknesses affecting the independent status of the Palestinian judiciary were already established in the Palestinian Basic Law, which invested the president of the Palestinian Authority with considerable power over the judiciary. First, the president of the Palestinian Authority is authorized to appoint judges, including the Chief Justice of the Supreme Court, and the Chairman of the Supreme Judicial Council who heads the judiciary. Second, the president of the Palestinian Authority has been given extensive powers to enact emergency legislation, and these enable him to influence, through legislation, the composition and independence of the authority, and to establish courts and determine their powers. Since the election of Mahmoud Abbas as president of the Palestinian Authority in January 2005,[[14]](#footnote-14) he has used these powers to gain control over the Palestinian judiciary. The leaders of the Palestinian judiciary and the Supreme Court have struggled against his actions, focusing mainly over the power of recommendation concerning the appointment of judges or their retirement; however, they have been careful not to criticize the legislative powers that the president assumed. The struggle also found its way into public and media discourse, as each side tries to harness public opinion to its advantage. I will leave the outcome of this struggle to the judgment of the readers of this article. In the next chapter, I will chronologically review the principal milestones in the judiciary’s struggle for independence during the tenure of the current Palestinian president, Mahmoud Abbas pursuant to the respective tenures of the Chief Justices of the Supreme Court.

**B. The Struggle for the Independence of the Judiciary during Mahmoud Abbas’s Tenure – In Practice**

**1. The Tragic End of Chief Justice al-Sourani’s Tenure (2005)**

When Mahmoud Abbas assumed the position of president of the Palestinian Authority, Justice Zuhair al-Sourani (زهير الصوراني) was the Chief Justice of the Supreme Court and head of the Supreme Judicial Council. Al-Sourani, a native of Gaza, born in 1936, obtained his legal education in Egypt, and was appointed the Palestinian Authority’s Attorney General in 1999, served briefly as Minister of Justice (2002–2003), and was then appointed by Yasser Arafat to his two senior judicial positions.[[15]](#footnote-15) At the end of July 2005, about six months after his presidential inauguration, Mahmoud Abbas began working to replace al-Sourani with a personal loyalist, Justice Issa Abu-Sharar (عيسى عبد الكريم إبراهيم أبو شرار). Unlike al-Sourani, who was a local jurist, Abu-Sharar had served as a prosecutor and lawyer in Jordan in 1963–1996, and had returned to the Palestinian Authority only after 1996, with Yasser Arafat appointing him to various judicial positions.[[16]](#footnote-16) It seems that byappoint Abu-Sharar, Abbas sought to place at the head of the judiciary a resident of the West Bank, who was not subject to the increasing influence of his opponents from Hamas, and who also shared a similar biographical background of his as a returnee from the diaspora.

To appoint Abu Sharar, Abbas had first to oust al-Sourani, and also to ignore the recommendations of the Judicial Council of which he was the head. Although al-Sourani was close to the age of retirement (70), so was Abu-Sharar, Abbas’s candidate. Abbas therefore embarked on a two-stage process to place his loyal supporter at the head of the justice system. Abbas first appointed Abu Sharar as al-Sourani’s deputy. The appointment order signed by Abbas stated that the appointment was made pursuant to a recommendation from the Supreme Judicial Council headed by al-Sourani.[[17]](#footnote-17) The second stage in the process, which included a series of serious incidents, indicates that the termination of al-Sourani’s tenure, and his replacement with Abu Sharar, was not to the court’s judges’ liking, and reflected a substantial dispute over the independence of the judiciary. In early August 2005 (August 2, 2005), just a week and a half after Abu-Sharar was appointed Vice President of the Court, a bomb was placed in front of al-Sourani’s home in the Rimal neighborhood of Gaza.[[18]](#footnote-18) At the same time, the Attorney General’s home was also attacked.[[19]](#footnote-19)

This serious attacks on the Chief Justice of the Supreme Court and the Attorney General generated a harsh response. Al-Sourani publicly accused the security services and the police of negligence, and claimed that the perpetrators of the attacks were known to them, alluding to those who, in his opinion, were responsible for the attacks.[[20]](#footnote-20) He resigned, publicly charging that judges could not work in an atmosphere where there was complete disregard for the law, as well as no protection for the judiciary. Although he retracted his statements after President Abbas promised to institute measures to stop the attacks on judges,[[21]](#footnote-21) in October 2005, Abbas published a law amending the 2002 Judiciary Law.[[22]](#footnote-22) Al-Sourani responded with public criticism at a conference held at the Palestinian Center for Human Rights in Gaza, where he claimed that the law was not submitted for the approval of the Supreme Judicial Council, which he headed, in violation of Palestinian Basic Law. He added that the Council disapproved of the amended law, because it undermined the independence of the judiciary, and transformed the Council into a political entity subordinate to the executive branch, since most of its members would be elected and appointed by the Minister of Justice and the Prime Minister.[[23]](#footnote-23)

A month later (in November 2005), the dispute over the constitutionality of the new law reached the doorstep of the Palestinian Supreme Court, then still sitting as the Constitutional Court. A petition was filed by the Association of Arab Lawyers for Human Rights, seeking a ruling that the law proposed by Abbas was unconstitutional. The Supreme Court, sitting in Gaza at the time, accepted the petition, and unanimously disqualified the law, claiming that it violated the independence of the judiciary and the status of the Supreme Judicial Council.[[24]](#footnote-24) The five-member panel was presided over by the Gazan judge Saada Al-Dajani (سعادة فوزي اalجاني). Born in 1940, she was appointed by Yasser Arafat in 1995 to serve as a Supreme Court justice, and was the first Palestinian and Arab female to occupy that important post.[[25]](#footnote-25) Dajani was incidentally appointed in 2007 by Abbas, on the recommendation of the Judicial Council, to the post of Vice President of the Supreme Court (Abu-Sharar), but did not attain the position of Chief Justice.[[26]](#footnote-26) The decision of the panel she presided over in the 2005 dispute over Abbas’s change to the law, was without a doubt a very brave one. It seems that the courage stemmed, *inter alia*, from the support that al-Sourani and Al-Dajani received from the Gazan public, two years before Hamas took control of the Gaza Strip.

However, the struggle for the most senior position in the judiciary ended with Abbas’s victory. Al-Sourani retired when he reached the age of retirement at the end of December 2005.[[27]](#footnote-27) The person appointed by Abbas to replace him as Chief Justice of the Supreme Court, and Chairman of the Judicial Council, was, as expected, his peer Justice Issa Abu-Sharar, who had been appointed as Vice President of the Court by Abbas only in July of that very year. His notice of appointment did not state that his appointment was made following a placement (*Tansiv* - تنسيب) by the Supreme Judicial Council. Given that it was customary to state this when such a placement actually did exist, it appears that the appointment was not made with the Judicial Council’s support.[[28]](#footnote-28) As we will see below, Abu Sharar has since become one of the most prominent and powerful figures in the Palestinian justice system, and President Abbas positioned him at the helm when he sought to strengthen his hold over it. Abu-Sharar served as Chief Justice of the Supreme Court, and Chairman of the Judicial Council from 2005 to 2009, and in 2019 Abbas again called on him to serve in those positions. He occupies them to this day, having long since (like Abbas himself) celebrated his eighty-fifth birthday.[[29]](#footnote-29)

The way al-Sourani’s tenure ended, and the appointment of Abu Sharar, reflected a recurring pattern of events that led to the termination of Chief Justices of the Supreme Court whom the president did not favor. The president nominates a candidate on his behalf for the senior post, the judicial branch objects, but Abbas nonetheless appoints the candidate of his choosing. As this pattern recurred, the buds of unsuccessful but inspiring attempts by the judiciary to retaliate also sprouted. The ruling by Justice Al-Dajani, mentioned above, who dared to invalidate Abbas’s legislation that sought to strengthen his hold on the judiciary – was the first of them.

**2. Abu Sharar’s First Term – The Court in Service of the President (2005–2009)**

During Abu Sharar’s tenure as Chief Justice of the Supreme Court and Chairman of the Judicial Council, there were (as expected) no conflicts between the judiciary and Abbas. During this time, Hamas won the Gazan parliamentary elections (January 2006), and took control of Gaza (June 2007). Abu Sharar was the man in charge of developing the Palestinian Authority’s legal system in the territory remaining under its control. During his tenure, a technical department was established within the Supreme Court, subject to its Chief Justice, with powers to monitor the actions of the various courts.[[30]](#footnote-30) Abu Sharar enacted by-laws to determine judges’ seniority,[[31]](#footnote-31) and also ensured the physical development of the courts in the West Bank.[[32]](#footnote-32) In an article he published in October 2009, a month before his retirement from office, he listed among his achievements in developing the judiciary the streamlining of supervision of judges’ work, as well as their training, and the “unremitting efforts,” as he put it, to institutionalize the activities of the Supreme Judicial Council.[[33]](#footnote-33) He also claimed that according to data in his possession, the Palestinian public’s trust in the judiciary had strengthened thanks to cooperation with civil society organizations, and the fostering of a good relationship with the media.[[34]](#footnote-34) However, in a summary of his tenure, Abu Sharar himself also implicitly criticized the infringement of the branch’s independence:

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… requires the existence of an independent and neutral judicial body, which 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 extremely 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 attempts have been made to interfere in the affairs of the judiciary*.*[[35]](#footnote-35)

Another understated allusion to Abu-Sharar’s dissatisfaction lies in an inexplicable action he took in May 2009, toward the end of his term. He filed a petition with the Supreme Court, on behalf of the Supreme Judicial Council, in which he sought to declare unconstitutional certain provisions of the Judiciary Law. The Attorney General objected to the petition. Two days before the hearing, Abu-Sharar announced that he wanted to withdraw the petition and did not attend the hearing. Acceding to the Attorney General’s application, the Court decided to dismiss the petition.[[36]](#footnote-36) It is difficult to imagine that in the State of Israel, or some other democratic state, such an extraordinary move would take place, in which the Chief Justice of the Supreme Court petitions the Court he heads. However, such a move seems to imply disagreements between the head of the judiciary, and the president and his supporters, and was seen as a legitimate means of pressuring the Palestinian Authority’s president to avoid such harm. As I will show hereinafter, such action would be repeated later; it is part of a recurring pattern that characterizes the termination of the tenure of Chief Justices of the Palestinian Supreme Court, who dare to criticize the president towards the end of their terms in office, or due to the very decision to terminate their tenure.

The judgments issued by the Supreme Court during Abu Sharar’s tenure provided legal justifications for many controversial actions taken by President Abbas. For example, after Hamas won the Gazan parliamentary elections (January 2006), and before the Legislative Council in its new composition was convened (March 2006), the outgoing Legislative Council convened (February 2006) to enact various laws, including the 2006 Constitutional Court Law, which allowed the president to establish another court, superior to the Supreme Court,[[37]](#footnote-37) as well as an amendment to the Ordinary Courts Law under which, in addition to other amendments, the Supreme Court would continue to fulfill the role of the Constitutional Court until the establishment of a Constitutional Court.[[38]](#footnote-38) However, in March 2006, at the first session of the Second Legislative Council, most of whose members were Hamas representatives, the new Council overturned its predecessor’s post-election decisions. A member and the chairperson of the previous Legislative Council petitioned the Supreme Court, sitting as the Constitutional Court, to order the annulment of the new Council’s decision to overturn its predecessor’s decisions. The Supreme Court, sitting with a panel of 11 justices (Abu Sharar did not sit on the panel) ruled, by majority (the identity of the judges in the minority, and the contents of their opinions, were never published), that it had the authority to review parliament’s decisions, and that the annulment was invalid.[[39]](#footnote-39) In thus ruling, the Supreme Court legalized the enactment of the Supreme Constitutional Court Law, as well as its own, the Supreme Court’s, continued interim functioning as the Constitutional Court. However, it failed to dispel the political cloud of legislation of a parliament whose membership had already been replaced by elections. The judgment was published in the Official Gazette only in 2016, after the establishment of the Supreme Constitutional Court, as part of the efforts to legitimize its delayed establishment, but this, as we shall see below, was controversial in part due to the cloud hovering over how it was originally established.[[40]](#footnote-40)

Another decision by the Supreme Court, no less controversial or dramatic, gave President Abbas a boost after Hamas took control of the Gaza Strip in June 2007. The separation between control of Gaza and control of the West Bank, which earned the nickname “The Partition” in Palestinian political jargon (in Arabic – *Anksam* - الانقسام)[[41]](#footnote-41) has since prevented the convening of the Legislative Council, and, in practice, it has ceased to function. In the absence of a functioning parliament, President Abbas assumed the PA’s legislative powers, based on Article 43 of the Palestinian Basic Law, which states that:

 The President of the National Authority, in events of necessity which cannot be delayed until the convening of a session of the Legislative Council, may issue decisions with the force of law, which shall be presented to the Legislative Council in the first session it convenes for after such decisions are passed.[[42]](#footnote-42)

The constitutionality of this action was put to a judicial test in December 2007, when the Association of Military Veterans filed a constitutional petition with the Supreme Court against amendments enacted by Abbas in the Pensions Law, based on the legislative powers he had assumed. The Supreme Court unanimously ruled, by a panel headed by Abu Sharar, that the president was authorized to legislate without limit, until the Legislative Council convenes. Abu Sharar justified this, first, by the existence of the authority in the Basic Law aimed at protecting the interests of the Palestinian people, and ensuring social solidarity, and secondly, because of the need for legislation that would maintain the existence of the Palestinian Authority, law and order, stability and continuity of the various authorities’ activities, until a Legislative Council could be convened.[[43]](#footnote-43) This ruling served Abbas’s interests well, as it effectively legitimized the non-existence of a Palestinian parliament, and the transformation of President Abbas into an unopposed legislature for a term that has not yet ended.

Abu-Sharar retired at the end of November 2009.[[44]](#footnote-44) President Abbas can certainly be pleased with the conduct of the Court during his tenure, Abu-Sharar’s minor attempts to criticize him, notwithstanding. This is evident from the fact that a decade later, Abbas reappointed Abu Sharar to a new term as Chief Justice of the Supreme Court and Chairman of the Judicial Council.[[45]](#footnote-45)

**3. The Farid Jallad Term: The Quiet Before the Storm (2009–2014)**

With the resignation of Abu Sharar, President Abbas appointed his successor, Farid Jallad (فريد عبداالله أسعد جلاد). Jallad, a lawyer born in Tulkarm (1944), previously did serve as a member of the Supreme Judicial Council (2003–2005), but that was by virtue of his being Deputy Minister of Justice, and then Minister of Justice (2005–2006).[[46]](#footnote-46) In October 2009, Abbas appointed Jallad as his legal adviser,[[47]](#footnote-47) and a month and a half later (December 1, 2009), Abbas appointed Jallad Chief Justice of the Supreme Court and the Chairman of the Supreme Judicial Council.[[48]](#footnote-48) The seniority system used in Israel as the method of appointing chief justices of Israel’s Supreme Court is not customary in the Palestinian Authority, and the president is authorized to appoint whomever he wishes, subject to receiving a “placement” (*Tansiv* - تنسيب) from the Supreme Judicial Council. Jallad’s appointment decree did not state that his selection was made based on such a placement.[[49]](#footnote-49) Thus, President Abbas used his power of appointment to appoint to the most senior position in the judiciary, without any consultation with the Supreme Judicial Council, a lawyer close to him, who had never served in the judiciary prior to his appointment as the Authority’s highest judge. In Israel, such a move would be perceived as a significant infringement on the independence of the judiciary.

In October 2009, President Abbas issued a decree announcing that on January 24, 2010, presidential and parliamentary general elections would be held in all the PA territories in the West Bank and the Gaza Strip.[[50]](#footnote-50) Two days before the deadline, Abbas signed a decree indefinitely postponing the election date. The decree stated that the postponement had been requested by the Central Election Commission as early as November 12, 2009, due to an inability to hold them in the Gaza Strip.[[51]](#footnote-51) The cancellation of the elections was the first challenge facing the Supreme Court during the Jallad era, as it was expected that the cancellation of the elections, and the resulting continuation of the parliamentary vacuum would test the legal legitimacy granted by the Court to the purportedly temporary exercise of legislative powers by the president. It seems that Abbas has already anticipated the tests to this authority he had assumed on the eve of Jallad’s appointment, and perhaps sought to ensure a supportive attitude from the Court through the appointment of a Chief Justice of his own choosing. Already in April 2019, thee Court, led by Jallad, repaid the debt. A financial consulting firm from Ramallah trading on foreign stock exchanges failed to receive a license and petitioned against the president’s legislation regulating activities on foreign stock exchanges. The Court reiterated that the president was empowered to enact laws under Article 43 of the Basic Law, and due to the urgent need to protect the economic and financial system in a time of economic crisis, his actions were justified here.[[52]](#footnote-52)

A less expected challenge landed on Jallad’s desk two years later. On January 3, 2012, the president published a law revoking the immunity of a member of Parliament, and, perhaps not incidentally, a political rival of his, Muhammad Dahlan.[[53]](#footnote-53) Dahlan petitioned the Supreme Court to declare the law unconstitutional. A majority of the Supreme Court decided to dismiss the petition due to lack of jurisdiction. The judgment, written by Chief Justice Jallad, reasoned that said law, despite being referred to as a law, is not a piece of legislation or a regulation, and therefore does not fall within the court’s jurisdiction as a Constitutional Court limited to judicial review of laws and regulations only.[[54]](#footnote-54)

President Abbas should have been happy with the decisions of Jallad’s Court. Like his predecessor, Jallad apparently sought to focus on the development of the judges’ internal oversight mechanisms. The Supreme Judicial Council, headed by him, established a Judicial Research and Training Center (مركز األبحاث والدراسات القضائية),[[55]](#footnote-55) but toward the end of his term, President Abbas decided to intervene in this matter as well. He implemented an earlier 2008 decision of his to set up a “Judicial Institute” and appointed, in consultation with his Minister for Justice, the judge he wanted to head it.[[56]](#footnote-56) Jallad’s tenure, like that of his predecessors, did not end peacefully. Jallad, whose tenure was expected to end in October 2014, upon reaching the age of retirement, submitted his resignation to the president five months earlier, on May 29, 2014, and the president accepted it immediately.[[57]](#footnote-57) The resignation aroused astonishment, and the press reported that the president had refused to accept it for two months (apparently it was submitted even earlier), but a day after its acceptance, he gave Jallad the Palestinian Honorary Star Award. The press attributed the resignation to opposition to Abbas’s intentions regarding the appointment of Jallad’s successor among members of the Supreme Judicial Council.[[58]](#footnote-58) The resignation did indeed mark the beginning of one of the heroic struggles for independence by the Palestinian judiciary.

**4. The Rise and Fall of Ali Mhanna: Open Warfare (2014-2016)**

The background to Jallad’s early resignation was in fact related to President Abbas’s plan to appoint Ali Mhanna (علي جميل مصطفى مهنا) as Jallad’s replacement. Mhanna, a relatively young jurist, born in 1954, completed his study of law at the University of Beirut in 1976, and had been a senior member of the Fatah movement since 1973.[[59]](#footnote-59) In the 1980s, he served time in an Israeli prison, and was released in 1985 in a prisoner exchange deal known as the “Jibril deal.”[[60]](#footnote-60) From 1994, he ran a law firm in Ramallah, and was one of the founders and chairmen of the Palestinian Bar Association.[[61]](#footnote-61) From 2012 to 2014, he served as Minister of Justice in the governments of Salam Fayyad and Rami Hamdallah.[[62]](#footnote-62) In May 2014, negotiations were conducted to establish a new Palestinian “national consensus” government, which was formed on June 2, 2014.[[63]](#footnote-63) That government’s Minister of Justice was a jurist born in Khan Yunis in the Gaza Strip and was not linked to the Fatah movement.[[64]](#footnote-64) A day before its establishment, on June 1, 2014, Mhanna was appointed by Abbas as Chief Justice of the Supreme Court and Chairman of the Supreme Judicial Council,[[65]](#footnote-65) having previously resigned all his other positions.[[66]](#footnote-66)

Similar to Jallad’s appointment, Abbas once more used his powers to appoint to the most senior post in the judiciary a politician who had never served as a judge. This time, however, the judges seemed unwilling to accept Abbas’s arrangement for his retiring Minister of Justice. Jallad’s early resignation on Thursday, May 29, 2014, marked the beginning of their struggle against Mhanna’s appointment. On the Sunday following the resignation (June 1, 2014), the Supreme Judicial Council convened in Ramallah, and appointed the Vice President of the resigning Chief Justice, Judge Sami Sarsour (سامي صرصور) to temporarily replace Jallad. It further decided to address President Abbas in a letter published the same day in the Palestinian media, requesting him to devote sufficient time to make decisions regarding the placement (*Tansiv* - تنسيب) of a new Chairman for the Council and Chief Justice for the Supreme Court, following the vacancy that had been created, and in accordance with Palestinian Basic Law and the Judiciary Law. It was further reported that members of the Supreme Judicial Council requested a meeting with the president to discuss this matter.[[67]](#footnote-67) Such a meeting apparently never took place, or at least was useless, since President Abbas signed a decision that day appointing Mhanna to the high-ranking posts, without mentioning that this was done on the basis of a placement by the Supreme Judicial Council.[[68]](#footnote-68) Even if the minor protest from the judges was not effective, it undoubtedly signaled to President Abbas that the judiciary’s position, when he appoints the person in charge of it, should be heard. In a regime where the president is an unopposed, all-powerful ruler, such protest is a display of both courage and risk-taking. As we shall see below, this was also not the last word in the struggle.

Mhanna took office immediately. He toured the courts, and already on June 10, 2014, convened the Supreme Judicial Council for a meeting attended also by his deputy, Justice Sarsour, at the end of which a joint statement was issued, in which the Council stressed the importance of strengthening the independence of the judiciary.[[69]](#footnote-69) In accordance with the placements by the Judicial Council headed by Mhanna, in March 2015 President Abbas appointed two additional judges to the position of Vice President of the Supreme Court, and also promoted ten additional judges who served as appellate court judges to sit on the Supreme Court.[[70]](#footnote-70) In August 2015, another judge was promoted to the Supreme Court.[[71]](#footnote-71) Mhanna seemed to be paving the way for President Abbas to make far-reaching changes to the Court’s composition.

However, in July 2015 a petition was filed with the Supreme Court against President Abbas, Ali Mhanna, and the Supreme Judicial Council, to disqualify Mhanna’s appointment as Chairman of the Judicial Council and Chief Justice of the Supreme Court, on the grounds that it was not carried out pursuant to a Supreme Judicial Council placement, and therefore violated the law, and constituted an abuse of power.[[72]](#footnote-72) The petition was filed by a lawyer from Nablus, Nail Fatukh Al-Huh (نائل فتوح الحوح), who consistently criticizes the judiciary in the Palestinian media, claiming that it had in fact become a part of the executive branch, and that judges’ appointments were being made for unsuitable, extraneous reasons.[[73]](#footnote-73) All the respondents sought to dismiss the petition, but their embarrassment was evidenced by the fact that after Mhanna and the Judicial Council first filed a joint response, the Palestinian Authority’s Attorney General announced that he represented Abbas and the Judicial Council only, and that Mhanna should reply to the petition in person.[[74]](#footnote-74)

The Supreme Court, by a three judge panel headed by Justice Hisham El-Hatu (هشام الحـتـو) and Justices Rafik Zahad (رفيق زهـد) and Ahmed Almani (أحمد المغني) ruled in favor of the petition, and in its judgment, published on December 7, 2015, overturned Abbas’s decision regarding Mhanna’s appointment as Chairman of the Supreme Judicial Council and Chief Justice of the Supreme Court.[[75]](#footnote-75) In a reasoned judgment, based on a ruling of the Jordanian High Court of Justice, the justices held that the need for any authority to receive a placement from another authority before an appointment is a substantive requirement, that is a condition for the validity of a decision of the decision-making authority, and if this condition is not satisfied, the decision must be annulled. The purpose of this requirement is to ensure consultation by the decision-making authority with the placement authority, in a manner that assures the public interest.[[76]](#footnote-76) The judges also rejected the claim that the petitioner had no standing, ruling that (author’s translation – H.S):

Appointing a judge without holding the legal proceedings to do so, makes him an illegal judge, and therefore the lawyer has a legitimate interest not to be harmed as a result of such appointment, as the illegal judge will consider and decide applications and legal actions filed by the lawyer. The moral and material damage is particularly severe since...the second respondent in not an ordinary judge in a court of first instance...rather, he is at the head of the judicial hierarchy....[[77]](#footnote-77)

The Supreme Court’s courageous ruling set a milestone in the Palestinian judiciary’s battle for independence. It received a great deal of attention in the Palestinian and Arab media.[[78]](#footnote-78) And it indeed succeeded in ending Ali Mhanna’s tenure, as he submitted a request to retire early to the president on January 19, 2016.[[79]](#footnote-79) Mhanna never returned to sit as a judge, even though he remained close to Abbas, and was appointed as his legal advisor in 2019.[[80]](#footnote-80) Not only did the ruling end the tenure of a judge favored by President Abbas, it also institutionalized Abbas’s duty to receive, in the future, placements on behalf of the Council as a condition to judges’ appointments. The ruling was therefore an important, even astonishing step for a judicial authority fighting against an autocratic ruler to secure its status. However, the judges should not have been satisfied with their victory, as Mhanna’s removal from office would certainly provoke harsh reactions from the president and intensify the struggle over both the appointment of Mhanna’s successor, and the status of the Judicial Council and the Supreme Court. These were indeed quick to arrive.

**5. Sami Sarsour’s Struggles for Independence (2016)**

Just one day after Mhanna’s resignation, on January 20, 2016, President Abbas appointed Mhanna’s Deputy, Justice Sami Sarsour (سامي طه طاهر صرصور), to serve as Chief Justice of the Supreme Court and Chairman of the Supreme Judicial Council,[[81]](#footnote-81) and Justice Imad Saleem Saad (عماد سليم ”أسعد عبد الله“ سعد) as Sarsour’s deputy, in both positions.[[82]](#footnote-82) In both decisions, President Abbas stated that they were taken pursuant to a “placement” by the Supreme Judicial Council. A day later, on January 21, 2016, President Abbas published another decision, which, according to its text, was based on the same “placement,” according to which Judge Imad Saleem Saad was appointed Sarsour’s “**First** Deputy” (نائبا **أول**).[[83]](#footnote-83)

Two petitions were filed in March 2016 before the Supreme Court against the aforementioned two decisions regarding the appointment of a “Deputy” and a “First Deputy,” by none other than a former Supreme Court Justice, Justice Abdullah al-Abbasi (عبدالله موسى غزلان العباسي). In one petition, which he later withdrew, al-Abbasi argued that the decisions were null and void, since, by law, the Vice-President of the Supreme Court should be the most senior justice.[[84]](#footnote-84) In the second petition, al-Abbasi reiterated this claim in conjunction with a harsher contention, that the appointment was not made pursuant to a placement by the Supreme Judicial Council, and therefore infringed on the separation of powers, as well as the independence of the judiciary, and was unlawful.[[85]](#footnote-85) Filing such petitions by a Supreme Court justice must have been done with the knowledge of its Chief Justice, and was a direct challenge to President Abbas, and a direct continuation of the struggle for independence that began with the disqualification of Mhanna’s appointment.

President Abbas feared another loss and acted pre-emptively by referring the decision on the matter to the newly established Constitutional Court (March 2016), on the tenth anniversary of the enactment of the Constitutional Court Law. The establishment of this Court was in itself a response to the displays of independence by the judiciary, and as I will explain in the next paragraph, in view of the composition of its judges, Abbas had reason to believe that the decision of the Constitutional Court would be supportive of him. This court was granted exclusive power by law to hear applications of constitutional interpretation (تفسير دستوري) of laws and of the Basic Law, in the event of disagreements regarding the rights, duties, and powers of the three branches.[[86]](#footnote-86) Those authorized to submit such petitions include the Minister of Justice, at the request of the president of the Palestinian Authority, the Prime Minister, the Chairman of the Legislative Council, the Chairman of the Supreme Judicial Council, or anyone whose constitutional rights have been violated.[[87]](#footnote-87) In accordance with this authority, the Palestinian Minister of Justice, at the request of the Prime Minister, on June 9, 2016, appealed to the newly established Constitutional Court to interpret, for the first time in its history, the sections of the Judiciary Law concerning the appointment of judges, emphasizing the status of the necessary “placement,” and the authority to appoint a Vice President in order to resolve the dispute regarding the appointment of Justice Saleem Saad as Deputy and First Deputy.[[88]](#footnote-88)The Supreme Constitutional Court found that the “placement” on behalf of the Supreme Judicial Council on which Abbas relied included four candidates for the presidency, including Justice Sarsour, who received the appointment, and Justice Imad Salim Saad, who was appointed deputy. The Constitutional Court held that a recommendation (placement) to appoint the latter Chief Justice must inherently imply a recommendation to appoint him Vice-President. The Court also rejected the contention that there was no role of “First Deputy” because it had been proven that the term was recognized and accepted by the Judges’ Council itself, and that in the wording of the placement conveyed by the Council, Judge Sarsour’s role at that time was “First Deputy.”[[89]](#footnote-89) The Constitutional Court held that Abbas’s decision to appoint Imad Saleem Saad as Deputy was valid, and that the legality of the appointment was (author’s translation):[[90]](#footnote-90)

 A constitutional right granted to the president of the State of Palestine, does not constitute a takeover by the executive branch, or an infringement of the essence of the authority of the judiciary, it does not undermine the principle of separation of powers, or infringe on the independence of the judiciary.

In conclusion, the Constitutional Court added an even more critique that the Supreme Court’s judgment concerning the disqualification of Ali Mhanna’s appointment, in which, as will be recalled, it was held that an appointment decision in absence of a placement is invalid,[[91]](#footnote-91) was not a judgment that should be used, or be viewed as a binding precedent, or ruled in accordance with it; in fact, it should be ignored, and not relied upon.”[[92]](#footnote-92) This remark, which was not necessary for the decision on the issue of the appointment of Imad Saleem Saad (since the Court believed it was made in accordance with a lawful “placement”), clearly indicates how much the Constitutional Court was willing to assist President Abbas. The entire decision shows how the appointment of the Constitutional Court was used by Abbas as a trump card helping him to control the rebellious Supreme Court.

In any event, on the day the Constitutional Court ruled (September 18, 2016), the other arm of the judiciary continued its losing struggle for independence. The Supreme Court, in a panel of three, headed by Justice Iman Nasser a-Din, accepted the petition before it against the appointment of Imad Saleem Saad as Deputy and First Deputy, and ruled that the appointment was void.[[93]](#footnote-93) It set forth two grounds for its decision: First, the “placement” on which Abbas relied was a placement for the position of Chief Justice, and not Deputy, and therefore, as far as the Supreme Court was concerned, the appointment as deputy was made not on the basis of a placement. The Court reiterated its previous ruling that an appointment made without a placement is void. The second reason given by the Court for the decision was that there was no “First Deputy” position in the relevant legislation, and therefore the decision to appoint a judge to such a position was invalid.[[94]](#footnote-94)

The contradictory rulings of the Constitutional Court and the Supreme Court indicate the intensity of the boldness of the Supreme Court and of its leader to fight for their independence. For Abbas, the legal complications the court’s audacity created crossed a line. Seeing that dealing with the judges using legal means did not achieve the results he sought, he turned to a harsher and less refined response. On the same day (September 18, 2016), a member of Fatah’s Central Committee, and former head of the Palestinian Authority’s General Intelligence Service, Tawfik Tirawi, launched a severe and direct media attack against Justice Sarsour. He attributed to Sarsour actions taken for personal motives, promoting associates, and even falsifying his date of birth. He added an explicit threat to the remarks (author’s translation):[[95]](#footnote-95)

 I call on the president and all the honorable and unbiased judges, to stop this farce that could harm the entire judiciary as well as the citizens’ trust in it. Those who exploit their positions for personal benefit and self-interest must be held accountable and brought to justice. Let us not be as the poet said: “Every time my family finds a castle, they destroy it. my family betrays my family.”[[96]](#footnote-96)

Two days later, Justice Sarsour fought back. He convened a press conference at the media center in the Supreme Judicial Council building in Ramallah to dismiss in detail, all of Tirawi’s accusations, although Sarsour still referred to Tirawi as a “patriot,” and announced that he was remaining in office, and was not considering resigning.[[97]](#footnote-97) In response, Tirawi intensified his attacks, and stressed that the problem of the Palestinian judiciary was its leader.[[98]](#footnote-98)

A few days later, Justice Sarsour took another far-reaching step. If President Abbas’s representatives appealed to the Constitutional Court to undercut the Supreme Court’s authority, Chief Justice Sarsour appealed to the Prime Minister on September 26, 2016 to ask the Constitutional Court to determine the legitimacy of President Abbas’s authority to legislate, in general, and in particular, to enact a law that would deny the immunity of members of the Legislative Council (as he did in the case of Dahlan). The application was submitted on October 9, 2016, but failed miserably about a month later.[[99]](#footnote-99) The Constitutional Court reaffirmed, in a written judgment handed down at the end of November, that President Abbas’s authority under Article 43 of the Palestinian Basic Law to legislate remained in effect so long as no new Legislative Council had convened. It also reaffirmed the president’s authority to remove, by legislation, the immunity of Members of Parliament, like Dahlan, if there was an urgent public need for that.[[100]](#footnote-100) About a week later (December 8, 2016), Abbas revoked the immunity granted to Dahlan and four other members of parliament against criminal prosecution through legislation relying on this, at the request of the Attorney General of.[[101]](#footnote-101) Although Dahlan himself immediately filed a petition with the Constitutional Court asking it to reverse its previous decision, it was rejected by the Court about two years later, holding that its ruling was final.[[102]](#footnote-102)

Since Sarsour strongly resisted the pressure exerted on him to resign, and even had the temerity to file a defiant petition with the Constitutional Court against President Abbas’s legislative powers, Abbas decided to dismiss him in an unusual way. On October 12, 2016, Abbas signed a decision appointing Justice Imad Saleem Saad as Acting President (قائما بأعمال) of the Supreme Court and the Supreme Judicial Council. The decision stated that the appointment was made after reviewing the decision of the Constitutional Court dated September 18, 2016, mentioned above, that affirmed Saleem’s appointment as First Deputy (نائباً أول).[[103]](#footnote-103) The next day (October 13, 2016), Justice Sarsour was summoned to President Abbas’s office, and was informed that his “resignation” was accepted; Sarsour later explained in an interview that this action of Abbas was based on a thank you letter written by Sarsour before his inauguration, in which he claimed that a judicial position is a mission and not an honor (تكليف وليس تشريفاً). Sarsour claimed in the interview that the words had been taken out of context, that he did not resign, that President Abbas had no authority to accept his resignation, and that “the only body that can dismiss a judge is the Supreme Judicial Council, after being investigated for any violations committed, after which a decision is rendered to dismiss him, and it is presented to the minister who returns it to the Judicial Council.” He further added that any action taken by his successor is void, and that he intended to file an appeal (which he never did).[[104]](#footnote-104) Human rights organizations in the Palestinian Authority were called to protest the dismissal / resignation action, and stressed that it could harm the independence of the judiciary.[[105]](#footnote-105) None of this helped Sarsour, and on December 15, 2016, Abbas appointed Imad Saleem Saad as Chief Justice of the Supreme Court and Chairman of the Supreme Judicial Council. The appointment decision stated that it was based on a placement by the Judges’ Council issued by it at a meeting convened that day.[[106]](#footnote-106) It appears that the Judicial Council, headed by the Acting Chairman destined to become the Chairman, realized that matters had gone too far. To this day. Sarsour is no longer a member of the judiciary, but continues to sharply criticize Abbas’s actions which undermine its independence from the side-lines.[[107]](#footnote-107)

**6. The Controversy Over the Purpose of Establishing the Constitutional Court**

As I have already stated above, in 2016, a new player entered the arena of the struggle for the independence of the judicial system – the Constitutional Court. President Abbas signed a decree establishing it, and appointing the first nine judges to its plenum on March 31, 2016, shortly after the disqualification of Ali Mhanna’s appointment, and the appointment of Sarsour to replace him.[[108]](#footnote-108) The establishment of the Constitutional Court deprived the Supreme Court of its power to temporarily serve as the Constitutional Court, and also revoked the Supreme Judicial Council’s power to advise the president regarding the appointment of judges to the Constitutional Court, which in accordance with Section 5 of the Constitutional Court Law, was vested in the General Assembly (الجمعية العامة) of Judges of the Constitutional Court. The very establishment of the Constitutional Court therefore inherently represented a weakening of the powers vested in the Supreme Court, whose constitutional decisions were viewed unfavorably by the president.

Indeed, the powers of the Supreme Court as a constitutional court were designed as temporary powers, and the intention to establish a constitutional court existed within the Palestinian justice system even before the PA was established. In the decision to establish the Constitutional Court, it states that it was taken after consultation (تشاور) with the Supreme Judicial Council and the Minister of Justice, as required by Section 5 of the Constitutional Court Law.[[109]](#footnote-109) President Abbas’s legal adviser, Hassan al-Uri (حسن العوري), noted in a media interview close to the time of the decision, that it was taken after “meticulous consultations” (مشاورات دقيقة).[[110]](#footnote-110) However, there are some indications that the establishment of the Constitutional Court, at the time when it was established, did not stem from an orderly plan to fulfill the dream of establishing a constitutional court, and that its real purpose was to allow Abbas to tighten his grip over the judiciary.

First, in the decade since the enactment of the Constitutional Court Law in 2006, Abbas refrained from establishing that court. The central formal rationale given for the delay was the partition between the Gaza Strip and the West Bank, and the cloud that overshadowed the manner in which the Constitutional Court Law had been enacted by a lame duck legislative body.[[111]](#footnote-111) While there was no significant change in the circumstances that prevented the establishment of the court in 2016, it was preceded by a series of events in which the judiciary exhibited “excessive” independence, undermining the president’s authority in a number of decisions, including the removal of Chief Justice Ali Mhanna, opposition to Imad Saleem Saad’s appointment as First Deputy, and Justice Sarsour’s defiant actions. One can assume, therefore, that the excessive independence demonstrated by the Chief Justice of the Supreme Court and his judges, overt events which may represent only a small proportion of what motivated Abbas to appoint a judicial body that would be superior to the Supreme Court. To squelch opposition, Abbas wanted control over the appointment of its judges, and therefore over their judicial inclinations, so that he would not be subjected to the rebelliousness he had encountered from previous Supreme Court justices and the Supreme Judicial Council. The public explanations given for the move by President Abbas’s adviser, al-Uri, reinforce this hypothesis (author’s translation):

Consultations to establish the Court have taken place since 2006, but the Palestinian Partition in 2007 between the West Bank and the Gaza Strip, due to Hamas’s control of the Gaza Strip, contributed to the delay in its establishment. Today, the president found himself faced with implementation of its foundation for two important reasons: The first, is the difficulty to hear appeals and constitutional issues that require resolution and legislation and their submission to the Supreme Court, which temporarily replaced the Constitutional Court, under Section 104 of the Palestinian Law.... until the Supreme Constitutional Court is established, and the second, is the implementation of Section 103 of the Palestinian Law which gives the president the right to issue a decree to establish the Constitutional Court, whose function is to supervise the constitutionality of laws, regulations, and ordinances, to interpret them, and resolve disputes between the three branches with respect to their respective powers and authorities.[[112]](#footnote-112)

The adviser therefore publicly admits both the long-standing reason for postponing the establishment of the Constitutional Court (which was still in effect) and the particular difficulty inherent in the constitutional decisions issued by the Supreme Court. However, he does not explain what upset Abbas so much in the Supreme Court’s constitutional decisions, which raised a “difficulty” that necessitated the urgent establishment of a constitutional court. In view of the developments I described above, it seems that the excessive independence of the Court, and the content of its recent decisions, are what led to the establishment of the Constitutional Court.

Secondly, there is indication that the Supreme Judicial Council and its Chairperson anticipated the establishment of the Constitutional Court, and may even have opposed it. In the circumstances on the eve of the new court’s establishment, it is unlikely that the Supreme Court and the Supreme Judicial Council under Chief Justice Sarsour would have voluntarily parted with their judicial authority, and it seems more likely to me that they were disturbed by the process of establishing a constitutional court. I found an allusion to this in the unusual and systematic process of publishing constitutional decisions by the Supreme Court in the years 2005–2015, which began shortly after Justice Sarsour’s inauguration. Until then, only very few Supreme Court rulings had occasionally been published in the Palestinian Official Gazette. Yet, from the end of December 2015, within four months, twenty-six judgments were published, entitled “Decisions Issued by the Supreme Constitutional Court” (قرارات صادرة عن المحكمة الدستورية العليا), but in practice, these were decisions by the Supreme Court acting as a constitutional court. The accelerated process of publication began on December 27, 2015, shortly before Sarsour’s appointment as Chief Justice following the judgment to annul Ali Mhanna’s appointment, and ended with the establishment of the Constitutional Court in April 2016.[[113]](#footnote-113) Among the judgments thus published – the decision that legalized the legislation of the Constitutional Court Law by a Legislative Council whose term had ended,[[114]](#footnote-114) decisions upholding the president’s power to legislate,[[115]](#footnote-115) and a decision that revoked the immunity of MP Dahlan.[[116]](#footnote-116) The timing of the publication, near the establishment of the Constitutional Court, and the contents of the judgments selected for publication, indicate that the editor who chose the timing and content sought to illustrate to those who intended to establish a constitutional court the important work the Supreme Court was doing as an Acting Constitutional Court. It is likely that the person responsible for the content and timing was Chief Justice Sarsour, possibly with the support of the Supreme Judicial Council, who in this way sought to convince President Abbas, or other supporters of the establishment of a constitutional court, that there was no need for this additional court, as the Supreme Court had a proven track record of constitutional decisions. It is further possible that the actual publication of the judgments was some type of expression of defiance aimed at the president, and perhaps even hastened the process of establishing the Constitutional Court. Regardless of the reason, the publication of the decisions undermined Abbas’s argument that the Supreme Court had a “difficulty” in issuing constitutional decisions, and reinforces the conclusion that the new Constitutional Court’s establishment was due to other motives, or to decisions Abbas found displeasing.

Thirdly, the composition of the new Constitutional Court clearly indicates that President Abbas wanted to staff it with judges who had no obligation to the judiciary in general. Of the nine judges (all of whom were male) appointed by Abbas in April 2016, four, including the President,[[117]](#footnote-117) had served as academic professors prior to their appointments, three were active lawyers, and only two, one of them the Vice President,[[118]](#footnote-118) had previously served as justices on the Supreme Court, and even these were occupying managerial and training positions immediately prior to their appointments to the new court.[[119]](#footnote-119) Needless to say, Sarsour, the Chief Justice of the Supreme Court, was not included among the members of the Constitutional Court, nor were his deputy or any of the active justices serving on the Supreme Court, and certainly not anyone who participated in the panels that issued the main judgments of the Supreme Court acting as a constitutional court. Following the appointments to the new Constitutional Court, Abbas issued a statement that “The Supreme Constitutional Court is composed of Supreme Court justices, academics, constitutional law experts, and lawyers” (in that order), and that its purpose is “To alleviate the burden placed on the Supreme Court.”[[120]](#footnote-120) The statement gives the impression that justices from the Supreme Court had a prominent place in the composition of the new Constitutional Court, and that they supported its establishment, but the reality of the appointments actually shows that veterans of the Supreme Court represented only a negligible number of its members. This discrepancy, between the stated policy and its implementation, in fact, supports the hypothesis that Abbas’s conscious aim was to weaken the Supreme Court, and not necessarily to ease its burden. However, it should be noted that in 2019, after the composition of the Constitutional Court was harshly criticized, Abbas appointed three more judges, two of whom had served as Supreme Court justices immediately before their appointments to the Constitutional Court, and one as President of the Court of Appeals and a member of the Judicial Council.[[121]](#footnote-121) Abbas also appointed another judge in 2021.[[122]](#footnote-122) However, the fact that these “corrections” came only a few years after the establishment of the Constitutional Court actually emphasis the real intentions that originally guided Abbas when he decided to establish the Constitutional Court. Moreover, the appointment of additional judges from the Supreme Court was done only after Abbas limited the term of office of Constitutional Court judges in 2017 to one six-year term.[[123]](#footnote-123)

Finally, the establishment of the Constitutional Court was accompanied by harsh criticism from politicians and human rights organizations, who attributed to Abbas an intention to undermine the independence of the judiciary. It was argued that the judges on the Constitutional Court were appointed without consultation with the Supreme Judicial Council, that the appointments were intended to strengthen the president’s influence over the appointment of judges, that only judges identified with one political party were appointed, that the establishment of the Court by Presidential Decree without a functioning, duly elected legislature undermined the legitimacy of the action, and that it would have been preferable to unify the judicial system under the management of one Supreme Judicial Council.[[124]](#footnote-124) It was further argued that all nine judges appointed in 2016 were affiliated with Fatah, President Abbas’s political organization.[[125]](#footnote-125) The criticism points to the way in which Abbas’s actions were perceived by the Palestinian public in real time, and is certainly consistent with my previous findings.

Therefore, the establishment of the Constitutional Court at the time it was established seems to represent another step by President Abbas to strengthen his control over the judiciary. The move was intended to weaken the Supreme Court and to give the president complete control over the appointment of judges to the most senior court in the system. However, as we shall see below, Abbas did not rest on his laurels. The public criticism leveled at him, as well as the minor manifestations of independence still remaining in the two senior chambers of the judiciary, the Supreme and Constitutional, forced him to institute further measures to maintain his control over the judiciary.

**7. Imad Saleem Saad’s Tenure, and the Legal Sector Development Committee (2016–2019)**

When Imad Saleem Saad was appointed as Chief Justice of the Supreme Court and the Supreme Judicial Council on December 15, 2016,[[126]](#footnote-126) the Court he headed no longer had the authority to serve temporarily as a constitutional court. This deprived him of the opportunity, which he had exercised in the past, to criticize the president’s legislative decisions regarding the justice system. The Judicial Council under his leadership also lost the opportunity to influence the identity of the judges in the most senior judicial body in the judicial system. The center of gravity of the decisions at these levels, shifted to the new Constitutional Court.

At the beginning of Saad’s tenure, it seemed that the tumultuous relationship between Abbas and his Supreme Court had subsided. Thus, for example, Abbas complied with the recommendation of the Judicial Council to appoint the veteran judge Hisham Hatu (ام روبين عيسى حتو) as Saad’s Deputy-Chief Justice, even though Hatu was the head of the panel that had decided to disqualify Ali Mhanna.[[127]](#footnote-127) The Palestinian government decided to authorize the Minister of Justice to sign agreements and memoranda of understanding regarding the legal sector (قطاع العدالة), a move that could be interpreted as a decision aimed at encouraging the allocation of budgets and structures to the justice system.[[128]](#footnote-128) A few days later, a new building was ceremoniously opened in Tulkarm for the courts and the prosecutors’ office, in the presence of Chief Justice Saad and other justices from the Supreme Court and the Constitutional Court, accompanied by speeches delivered by the Prime Minister and the Attorney General praising the cooperation between all the elements of the judicial system.[[129]](#footnote-129) In September 2017, President Abbas ordered, by decree, the appointment of a “National Committee for the Development of the Legal Sector” (اللجنة الوطنية لتطوير قطاع العدالة), whose stated purpose was to formulate a “comprehensive vision for the development of the judicial and legal sector,” and to formulate recommendations “that would strengthen the independence of the justice system, its efficacy in providing justice for all efficiently and honestly (نزاهة), and would protect the justice system from external influences.”[[130]](#footnote-130) The committee was headed by Supreme Court Chief Justice Imad Saleem Saad.[[131]](#footnote-131)

However, the composition of the Committee revealed an intention to effect far-reaching changes to the judicial system. Other than the Chief Justice of the Supreme Court, not a single judge served on it. Even the judges of the Constitutional Court, which had just been established as the most senior judicial body in the Authority, were not represented on the Committee. Three of its nine members came from the executive branch: The Minister of Justice, the Attorney General, and the Director General of Legal Affairs in President Abbas’s office. The other five members were appointed, as the Committee’s report expressly stated, from “outside the official apparatus,”[[132]](#footnote-132) among whom were the Chairman of the Palestinian Bar Association, the CEO of the Independent Authority for Human Rights, and the Deans of the Faculties of Law at the universities of Bir Zeit, a-Najah and Al-Quds.[[133]](#footnote-133) It is small wonder then, that a committee, the majority of whose members had no personal commitment to those serving in the judiciary, produced conclusions mainly stressing the need to increase supervision over judges and the judiciary, and thus inherently undermine their independence.

The Committee was asked to issue its findings within six months, but due to the prolongation of discussions, it received a six month extension, and submitted its final report on September 5, 2018.[[134]](#footnote-134) The Committee’s report highly praised President Abbas and his legal secretariat for their contribution to the Committee’s workings.[[135]](#footnote-135) Abbas’s representative on the Committee was elected by its members to serve as the Committee’s Deputy Chairman, and its recommendations were given to Abbas for prior approval.[[136]](#footnote-136) Although the report stated that the most dangerous challenge to the Palestinian justice system was the “Israeli occupation,”[[137]](#footnote-137) followed by the Partition between Gaza and the West Bank,[[138]](#footnote-138) yet, after addressing these aforementioned external challenges, it points an accusing finger at the judiciary itself, and especially at the Supreme Judicial Council. The report argues that there is a lack of clarity in defining the relationship between the Judicial Council, the Ministry of Justice, and the Attorney General, that the judiciary’s rulings do not properly balance a judge’s independence and responsibility (خضوعه للمساءلة), and that the Supreme Judicial Council failed to find sufficient legal tools to meet any of the challenges noted.[[139]](#footnote-139)

The report’s recommendations seem at first glance as a great achievement for the judicial system and the Committee’s Chairman, Imad Saleem Saad. They strengthen the position of the Supreme Judicial Council while drawing conclusions from a series of events that had harmed the judiciary in recent years. Aside from general statements regarding the importance of judicial independence, legislative amendments were recommended that would give the judiciary budgetary independence, and the head of the Judicial Council the authority to prepare and manage the budget. Recommendations were made with respect to the establishment of eligibility requirements for the appointment of the Chief Justice of the Supreme Court and his deputy, and to institutionalize the duty incumbent on the president to consult the Judicial Council and its members regarding the appointment of judges.[[140]](#footnote-140) The report also sought to change the composition of the Supreme Judicial Council by adding two justices from the Supreme Court, on the one hand, but, on the other, adding the most senior of the presidents of the District Court (Bedaya) as well as “An esteemed legal persona with impartial integrity and ability (كفاءة) from outside the three branches (judicial, legislative, and executive), to be appointed by the president in accordance with a placement from the Council.”[[141]](#footnote-141) Moreover, boundaries were set for the respective responsibilities of the Judicial Council and the Ministry of Justice, so that the administrative supervision of judges would be in the hands of the Judicial Council, and the respective courts’ presidents, but the Ministry of Justice would be responsible for the construction of courts, and the government would be responsible for allocating budgets and administrative manpower to the judiciary.[[142]](#footnote-142) The Committee proposed a series of suggestions aimed at structural changes of the justice system, including the addition of a Court of Appeals, the creation of an Administrative Court of first instance that would be subject to the Supreme Court,[[143]](#footnote-143) and the establishment of a Serious Crimes Court.[[144]](#footnote-144) Some of the recommendations related to the status of the prosecutors within the legal system.[[145]](#footnote-145)

Alongside these recommendations, a number of recommendations increased ways to supervise judges’ work. First, it was stipulated that the Ministry of Justice would be responsible for analyzing the data provided by the Judicial Council on the prosecution’s proceedings, case numbers, and their statistical analysis, and would submit a report to the government on the functioning of the judicial system in general, as well as citizens’ right of access to courts.[[146]](#footnote-146) Second, it was recommended that a nine-member temporary committee be formed, consisting of the Chairman of the Judges’ Council (Chairman), the Minister of Justice, the Attorney General, the Chairman of the Bar Association, and five autonomous and independent members, that would conduct a judicial evaluation (التقييم القضائي) of all the judges and personnel in the prosecutors’ office.[[147]](#footnote-147) Third, to inject new blood into the judicial system, it was recommended that judges’ retirement age be lowered to 65 (from 70), with the exception of the current Chairman of the Judicial Council, with respect to whom it was determined that he remain in office to ensure that the decision was implemented.[[148]](#footnote-148) This recommendation anticipated an expected replacement of judges, in the Supreme Court as well as in other courts, giving the president a fresh opportunity to appoint judges to his liking. As expected, and as I will demonstrate below, this recommendation was one of the focal points of the struggle over implementing the Committee’s report. Fourth, it was recommended that a judicial supervision department be formed, headed by a judge, eligible to be appointed to the Supreme Court, who would be appointed by the president pursuant to a placement from the Judicial Council. The department would be empowered to supervise all judges, with the exception of the Chief Justice of the Supreme Court, and would have the power to order the suspension of judges for mediocre achievement, subject to the right of a hearing before the Judicial Council.[[149]](#footnote-149) Finally, it was recommended that the Judicial Disciplinary Commission be strengthened by academia guidance, and that a scale of significant disciplinary sanctions be put in place, including suspension of promotions and dismissal.[[150]](#footnote-150)

Although on the face of it, some of the recommendations seem to be legitimate recommendations seeking to balance the independence of the judiciary with its responsibilities to properly function, some, especially the recommendations related to judges’ early retirement, and the recommendation to establish Administrative Courts, became a source of controversy that justified, about a year later, and in the spirit of the reform which the Committee recommended, the dissolution and then re-establishment of the Supreme Judicial Council, and the replacement of the senior Supreme Court justices, including Chief Justice Imad Saleem Saad. Thus, the National Committee for the Development of the Legal Sector became a double-edged sword by which Abbas managed to get rid of some of the unruly Supreme Court justices who had the courage to exhibit a measure of independence from him, as well as neutralize the remainder of the Supreme Court’s administrative review powers.

**8. A Day of Revenge – Replacing the Supreme Judicial Council and Retiring Senior Judges (2019–2021)**

Almost a year after the publication of the report by the National Committee for the Development of the Legal Sector, President Abbas used the temporary legislative power in his possession to publish, on July 15, 2019, two laws through which he completed his takeover of the judiciary. The preamble to both states that they were passed based on, *inter alia*, recommendations made by the National Committee for the Development of the Legal Sector headed by Imad Saleem Saad. One law amended the Judiciary Law of 2002. The first section of that law established eligibility conditions for the appointment of senior members of the judiciary: the Chief Justice, Vice President and other Justices of the Supreme Court, and the Presidents of the Courts of Appeal. The second, and more far-reaching section, stipulated that a judge’s term of office would end once he attained the age of sixty (and not sixty-five, as recommended by the Committee),[[151]](#footnote-151) *i.e.*, a full decade before the retirement age prescribed by the previous version of the law.[[152]](#footnote-152) The immediate implications of this section was the removal from office of many senior judges, including many of the senior justices sitting on the Supreme Court.

The second law published that day, entitled “Establishment of a Transitional Supreme Judicial Council (مجلس قضاء أعلى انتقالي),” was far more radical in its consequences. The first section of the law provided that the Supreme Judicial Council, as well as all the departments (هيئات) of the Supreme Court and the Courts of Appeal were dissolved forthwith. The second section established a “Transitional” Supreme Judicial Council, and gave it the authority, “To reform and develop the judicial and public prosecution systems, in a manner that ensures the rule of law, the independence of the judiciary, the right of access to the courts, and the separation of powers.” To this end, all the powers of the disbanded Council were transferred to the new Council, as well as the power to reorganize the Courts in any instances, and the power to recommend that President Abbas dismiss judges, or force them into early retirement, if their continued judicial tenure harms the judiciary’s status, or the public’s trust in it. The Transitional Council was also authorized to draft bills aimed at further reforms, and to prepare for the re-establishment of the Permanent Supreme Judicial Council. The fourth section provided that the term of office of the Transitional Council would be one year, which could be extended by an additional six months. It also provided that its members could continue to enjoy their salaries and benefits as they had prior to the establishment of the Transitional Council, and that the provisions of the law pertaining to the retirement age and the composition of the Supreme Judicial Council would not apply to members of this Council.[[153]](#footnote-153)

Section 3 of the Law prescribed the composition of the seven-member Council, which included, in addition to the Attorney General and a representative from the Ministry of Justice, four serving judges. Two of them had already served as Supreme Court justices – Justice Salwa Kamal George al-Saiyah (سلوى كمال جورج الصايغ) who was appointed to the position in 2009, during the first term of Chief Justice Abu Sharar,[[154]](#footnote-154) and Justice Azmi Hussein Ahmad Tangier (عزمي حسين طنجير), who had already retired before his appointment to the new Council.[[155]](#footnote-155) The other two justices served as president and member of the Court of Appeals in Jerusalem,[[156]](#footnote-156) and both were promoted to the rank of Supreme Court justice two weeks after their appointments to the Transitional Council, and based on its recommendation, which was allegedly supported by a haphazard Judicial Council recommendation dated five months earlier.[[157]](#footnote-157) The position of Chairman of the Transitional Council and Chief Justice of the Supreme Court was given to none other than the retired, 83-year-old, judge Issa Abu-Sharar, who had served as Chief Justice of the Supreme Court in 2006–2009, retired a decade earlier, the circumstances of whose appointment and tenure have already been reviewed above.[[158]](#footnote-158)

Within a single day, therefore, President Abbas, under the guise of judicial independence, and using the legislative powers he had assumed, ended the tenure of the most senior Supreme Court justices, and appointed a Judicial Council with a more amenable composition, headed by an individual who had already demonstrated loyalty to the president in his previous tenure. The new – old chief justice, Abu Sharar, was quick to establish a new status quo. The Transitional Council he headed recommended, already at one of its first sessions, the appointment of seven new justices to the Supreme Court. Although President Abbas’s appointment decision stated that it was based on a recommendation of the disbanded Judicial Council,[[159]](#footnote-159) in practice, the retired leadership of the judiciary expressed strong and unprecedented opposition to the new legislation, and the new Council it established. On July 28, 2019, the judges petitioned the Constitutional Court to declare the two laws that had just been enacted by Abbas to be unconstitutional. The Applicants in the petition were sixteen judges, eleven of whom were Supreme Court justices, including the Vice-President, Justice Hisham Hatu, as well as four appellate court judges, and one district court judge.[[160]](#footnote-160) They were represented by Adv. Alhuh, who at the time, filed the successful petition to vacate the appointment of former Supreme Court Chief Justice Ali Mhanna.[[161]](#footnote-161) The petition was filed against the president, the Prime Minister, the ministers, the Attorney General, the Chairman of the Transitional Judicial Council and its other members. The Applicants motioned to annul both the early retirement of judges who were over sixty years old, and the establishment of the Transitional Judicial Council.[[162]](#footnote-162)

The judges’ petition to the Constitutional Court was apparently a success. The Constitutional Court ruled that lowering the age of retirement for judges resulted in a dismissal of incumbent judges, contrary to the grounds set forth in the law, and therefore impaired the independence of the judiciary. It held that said action was unconstitutional, and did not apply to incumbent judges. It stressed that judges’ immunity from dismissal was intended to protect the judiciary, and guarantee its independence. A judge may be dismissed only if he has been sentenced in disciplinary proceedings, and the disciplinary penalty of dismissal was imposed on him on the basis of conclusive evidence.[[163]](#footnote-163) It further added that the composition of a judicial body could not be changed by legislation in order to influence its rulings, and that the principle of judicial independence mandated that the state provide the judiciary with all its financial needs as necessary for it to administer the system of justice.[[164]](#footnote-164)

However, the cancellation of the dismissal of the incumbent judges was only a partial success. Nine judges of the Constitutional Court, including its President, held that the decision to dissolve the Supreme Judicial Council and replace it with a new “Transitional” Council was constitutional. They reasoned that in their view, the powers of the Supreme Judicial Council were not judicial powers, but administrative and disciplinary powers, and therefore its replacement by a new Council did not contradict the provisions of the Basic Law which prohibit intervention only in the judicial process itself.[[165]](#footnote-165) Only one judge, Fawaz Ziama (فواز صايمه),[[166]](#footnote-166) disagreed with his colleagues, holding that the establishment of the Transitional Council was unconstitutional and should be annulled. This was due both to the fact that it was not preceded by a consultation with the outgoing Council, which was empowered to advise on legislative affairs, but mainly to the fact that the new Council’s authority to recommend the appointment of many judges to fill the gaps created by the early retirement of judges who reached the age of sixty was a prohibited and direct interference in matters of justice and adjudication.[[167]](#footnote-167)

By means of this petition, the Constitutional Court was also forced to join the struggle for the independence of the judiciary. A complete dismissal of the petition would have confirmed the criticism leveled at it, that it was nothing more than a tool in Abbas’s hands to undermine judges’ independence. Its acceptance would have resulted in a direct confrontation with the president. The Constitutional Court’s decision reflects the crisis it had fallen into. When it overturned the early retirement of serving judges, the Constitutional Court demonstrated a semblance of independence. On the other hand, leaving the Transitional Judicial Council in place allowed President Abbas’s henchmen to continue with their actions to tighten his grip over the justice system, and keep the retired judges outside the system. Less than two weeks after the ruling, on September 15, 2019, President Abbas issued two decisions, which, according to their texts, were based on the Transitional Judicial Council’s recommendation in a meeting held that day, ordering the early retirement of nineteen (19) Supreme Court and Courts of Appeal judges. Said list also included twelve of the sixteen Applicants in the judges’ petition to the Constitutional Court.[[168]](#footnote-168) The decisions led to the retirement of the most senior members of the Supreme Court, including the Vice President, Justice Hisham Hatu, and his colleagues, who at the time had disqualified the appointment of Ali Mhanna. The circumstances that preceded this decision were related in an interview by Supreme Court Justice Ahmad al-Ma’ani (أحمد المغني), who was one of the judges forced into early retirement (author’s translation):[[169]](#footnote-169)

 We came to work on Sunday after the Constitutional Court’s decision, prepared an ordinary day at work, so much so, that the Vice President, Justice Hisham Hatu, called at 10 a.m. for the Chairman of the Transitional Judicial Council, Mr. Issa Abu-Sharar, to arrange a meeting with him regarding the rebuilding of the court departments (and renewal) of their workings. Hatu was surprised by Abu-Sharar’s response that he had a meeting of the Supreme Judicial Council scheduled for him (Abu-Sharar – H.S.), and therefore he would not be able to meet him (Hatu – H.S.) on that day. Nevertheless, Justice Hatu asked one of the administrative workers to prepare signs with the names of the judges to hang on their office doors, but the employee informed him that he was not able to do so without Abu Sharar’s permission. This evidences that the action of forcing judges into retirement was intentional.

The judges did not despair, and launched a series of media attacks and legal actions against President Abbas’s acts. One of the judges who was forced to retire, Justice Osama Al-Kilani (أسامة عبد الله محمد زيد الكيلاني), decided not to return to his position, resigned while live on a radio show,[[170]](#footnote-170) and filed a petition with the Supreme Court (from which he resigned), claiming that the appointment of the members of the Transitional Judicial Council and its Chairman were made without the outgoing Judicial Council’s recommendation, and were therefore void. A press release from “one of the members of the Transitional Council,” stated that this action was perceived by the Council as a “judicial coup,” and hinted that one of the reasons given for the renewed dismissals, lay in the fact that it would be inconceivable that judges who had just returned to office could not hear a petition touching on a subject matter related to them.[[171]](#footnote-171) I have not found that petition, or the decision made on it, but another petition, filed by Al-Kilani in October 2019, against Abu Sharar and the Council he headed, was dismissed a year later due to the applicant’s failure to attend.[[172]](#footnote-172) A few months before the dismissal, it was reported that Abu-Sharar had filed a criminal complaint against Al-Kilani and another judge for public statements, and as a result, the two were summoned for questioning.[[173]](#footnote-173)

Four other judges who were forced to retire, three of whom were Supreme Court justices, re-filed a petition in November 2019 with the Constitutional Court.[[174]](#footnote-174) In the petition against President Abbas, the Chairman of the Supreme Judicial Council, and its members, the government, and the Attorney General, again claimed that the law that established the Supreme Transitional Judicial Council, and which disbanded the Council that preceded it, was unconstitutional, and further claimed that the recommendation issued by the Supreme Transitional Judicial Council, on which the president’s decision to force them to retire relied, failed to satisfy the conditions prescribed by the Judiciary Law for issuing such a recommendation, *i.e*., that their continued employment in a judicial capacity “will affect the prestige of the judicial system and the public’s trust in it.”[[175]](#footnote-175) This time, the Constitutional Court dismissed the petition on the barely plausible grounds that its previous decision regarding the constitutionality of the establishment of the Judicial Council is a binding precedent, and therefore it is not authorized to re-examine “the same substantive dispute that it had already ruled on.”[[176]](#footnote-176) By this decision, the Constitutional Court ignored the claim that the decision of the Judicial Council to remove the judges from office is in itself unconstitutional.

One of the petitioners, Supreme Court Justice Ahmad al-Mu’eni (احمد سلمان حسين المغني), reached out once more to the Minister of Justice about six months later, on June 28, 2020, for the latter to apply to the Constitutional Court for an interpretation of the law establishing the Transitional Judicial Council. The application was submitted by the Minister of Justice to the Constitutional Court the following day. Formally, the Court was asked to interpret various aspects of the new Council’s authority, such as the quorum required to convene it, the scope of its powers to dismiss judges, and the Council Chairman’s (Abu Sharar) authority to sit in judgment.[[177]](#footnote-177) In fact, it was a repeated attempt to attack the dismissal of the judges and the appointment of Abu Sharar as head of the Council. The Constitutional Court ruled on the application only a year later, and held that it had no jurisdiction to hear it. It justified this by saying that its authority was limited to interpretation applications that reflected disputes of principle between different governing authorities, and are submitted by them, while the application before it was submitted by a person currently serving as a lawyer (...) and his interest in the decision was personal, and not an objective dispute between authorities. It further added that the texts before it were clear, and that there was no dispute between various authorities regarding their implementation. In analyzing the texts, the Constitutional Court reaffirmed all of President Abbas’s actions, including the establishment of the Council, its composition, its power to dismiss judges, and the appointment of its chairperson to the position of Chief Justice of the Supreme Court.[[178]](#footnote-178)

In June 2020, Abbas extended the tenure of the Transitional Judicial Council, pursuant to its own recommendation, by six months.[[179]](#footnote-179) During its tenure, Abbas, and Abu Sharar spearheaded reforms in the judiciary. These included bureaucratic reforms, such as eliminating paper files and computerizing them,[[180]](#footnote-180) but also personnel changes, including the appointment and promotion of judges,[[181]](#footnote-181) and forcing additional judges into early retirement.[[182]](#footnote-182) A Code of Judicial Conduct (مدونة السلوك القضائي) was also published, which imposed ethical and administrative duties on judges, with the stated intention of strengthening the independence of the judiciary, and increase public confidence in it.[[183]](#footnote-183) Abu-Sharar himself even filed with the Constitutional Court a petition for legislative interpretation intended to protect the independence of the judiciary from interference by the government body authorized by law to oversee its budget and management. The Constitutional Court accepted Abu-Sharar’s claim in principle that said body is not authorized to intervene in the judges’ work, but ruled that the law on the matter was so clear that there was no scope for accepting the request for interpretation (which was denied).[[184]](#footnote-184)

Although such reforms can be seen throughout the justice system, and may even be justified with regard to the Palestinian justice system, in view of the events that preceded their implementation, they were not accepted with confidence regarding their intent, and provoked numerous protests in the written and broadcast media. Abu Sharar tried to fend off the criticism in an interview with a television channel. In the interview, he claimed that it was the Council he headed that was under “covert attack,” and that there were forces that did not wish to see reforms of the justice system. He stated that the retired judges were no longer fit for judicial work.[[185]](#footnote-185) Abu-Sharar’s media statements indicate that the judges’ struggle did bear some fruit. Even though directly the establishment of the Transitional Judicial Council led to significant interference with the judicial system, and the forced retirement of dozens of judges, the public and media resonance of the struggle would nonetheless make it more difficult to effect such actions in the future.

**9. Establishment of a New Permanent Judicial Council and Establishment of Administrative Courts (2021)**

In January 2021, the Transitional Judicial Council’s term in office ended, and President Abbas appointed a new Permanent Judicial Council. He once again appointed his loyal supporter Abu Sharar as the Council’s chairperson and as Chief Justice of the Supreme Court.[[186]](#footnote-186) The day before the establishment of the new Council, the Official Gazette published three new laws enacted by President Abbas under his temporary authority as legislature, including a comprehensive reform of the structure of the judicial system. The Ordinary Courts Establishment Law (المحاكم النظامية) re-established the four ordinary courts (magistrate’s, district, appeals, and supreme) and stipulated their respective powers, panels, departments, and the number of judges serving on them. This law replaced legislation from 2001 that dealt with the issue, and it appears that its provisions overall improved the system, and did not necessarily harm it.[[187]](#footnote-187) The second law, that amended the Courts Law of 2002, included provisions regarding the appointment of judges, their removal from office, and supervision of their actions. The power of appointment and removal from office remained in the hands of President Abbas, but it seems that the law was actually innovative in that it set clearer conditions for the exercise of this power, defined perfectly reasonable conditions of eligibility for judicial office, and strengthened the weight of the Judicial Council in making recommendations on these matters.[[188]](#footnote-188) As far as the appointment of the Chief Justice of the Supreme Court is concerned, the amendment did not change the law, which provided that the president should consult the Supreme Judicial Council, but expressly provided that the Council should recommend a number of candidates for office to the president, and that the term of the Chief Justice’s tenure shall not exceed five years.[[189]](#footnote-189) The two aforementioned laws had already been approved by the Transitional Judicial Council headed by Abu Sharar as early as February 2020.

The more far-reaching change was brought about by the third law enacted by Abbas on the eve of the establishment of the new Supreme Judicial Council – the Administrative Courts Law 2021. Said law established an independent and separate system of Administrative Courts in two instances (first and supreme), and transferred the Supreme Court’s jurisdiction to hear various administrative matters concerning the affairs between a citizen and an authority. It should be noted that the establishment of the administrative court of first instance was one of the recommendations issued by the Committee for the Advancement of the Legal Sector, but whereas it recommended that the first instance Administrative Court to be established should be subjected to the Supreme Court,[[190]](#footnote-190) the new law created a separate upper court for administrative affairs, as well as creating a separate mechanism for appointing its judges. The power to select the judges of the two administrative courts, once established, was naturally granted to the president; however, with respect to the Constitutional Court, the authority to recommend appointment following the initial appointment passed from the Supreme Judicial Council and the Minister of Justice, to the General Assembly of Administrative Judges.[[191]](#footnote-191) Thus, the Supreme Court authority to judicially review the executive’s actions was neutralized, just as the establishment of the Constitutional Court deprived it of the power to adjudicate on constitutional affairs. It remains primarily an appellate court for civil and criminal appeals. Even if the establishment of specialized courts per se does not necessarily indicate an infringement of the judiciary, and systemic explanations can be given for such action, the circumstances of their establishment, and the complete nullification of the Supreme Court’s administrative supervisory authority, were perceived among lawyers, human rights organizations, and Supreme Court justices, as part of the process described thus far of Abbas’s growing hold over the judiciary.[[192]](#footnote-192) Protests against the legislation were so fierce that it led to demonstrations in front of the Judicial Council building in Ramallah, in the course of which protesters called on Abbas to stop interfering in the judiciary’s affairs, and dismiss Abu Sharar.[[193]](#footnote-193) They also found their way into the Israeli press.[[194]](#footnote-194) It is possible that the public outcry, and its resonance in the media, may have produced some benefit, even if only temporary, since, the new legislation notwithstanding, the new Administrative Courts have not yet been established, and no judges have been appointed to them to date. This action, similarly, to the circumstance of the establishment of the Constitutional Court, may take place at a later date, when the opportunity presents itself.

In the period that has elapsed since the establishment of the Permanent Council to today, there have been two appointments that can also be seen, at first glance, as actions that strengthen the judiciary. They may have been made in response, even if just partial, to public criticism. First, in June 2021, Abbas appointed three new judges to the Constitutional Court, per the recommendation of the Board of Judges of the Constitutional Court.[[195]](#footnote-195) One of them was the Vice President of the Supreme Court (retired) Justice Farid Aqel (فريد جميل محمود عقل) who was the First Deputy of the Supreme Court appointed to serve as a judge on the Constitutional Court. However, Aqel was appointed to the position of Deputy only five months earlier,[[196]](#footnote-196) and had already retired from his post as Deputy two months thereafter, and three months before his appointment as a judge on the Constitutional Court, so that when he was appointed to the Constitutional Court, he was no longer serving as a Supreme Court justice.[[197]](#footnote-197) Moreover, his early and swift resignation from the post of Vice President of the Supreme Court stemmed from his desire to be a candidate on behalf of the Fatah movement for the upcoming Palestinian Legislative Council elections.[[198]](#footnote-198) Those were supposed to take place in mid-2021, but at the end of April President Abbas postponed them to some unknown future date “when they can be held in all the lands of Palestinian, and especially the capital Jerusalem.”[[199]](#footnote-199) Aqel’s migration from the judiciary to the political arena, and back to the judiciary, is not unusual in the PA. It attests both to the lack of clear ethical boundaries to a judge’s actions, and to the political closeness of some judges to President Abbas. The other two judges appointed by Abbas to serve as judges on the Constitutional Court had not previously served as judges at all. One of them was an academic,[[200]](#footnote-200) and the other served as Attorney General.[[201]](#footnote-201) The appointment of a senior Supreme Court justice to the post of Constitutional Court judge joined the appointment of two more Supreme Court justices to the Constitutional Court in 2019.[[202]](#footnote-202) It is quite possible that the public criticism leveled at Abbas regarding the purposes for establishing the Constitutional Court led to this move.

Secondly, with Fried Aqel’s resignation from the post of Vice-President of the Supreme Court, Judge Iman Naser al-Din (إيمان كاظم عبدالله ناصر الدين) was appointed to the position.[[203]](#footnote-203) Justice Naser al-Din, born in Hebron (1957), was appointed a judge in 1982, and has served at all levels of the justice system since then.[[204]](#footnote-204) Despite being a very senior judge, who even presided over the panel that overturned Abbas’s decision to appoint Imad Saleem Saad as First Deputy,[[205]](#footnote-205) she was not forced into early retirement. The appointment was ostensibly seen as an action strengthening the justice system, as well as one incorporating women into its most senior positions. Naser al-Din is frequently interviewed about the status of women in society in general, and in the judiciary in particular, and is portrayed in the Palestinian media as the First Female Judge of Palestine,[[206]](#footnote-206) even though, in the past, no less courageous a woman served as a judge, in the capacity of Vice President of the Supreme Court.[[207]](#footnote-207) It is quite possible that her appointment was also intended to reduce public criticism leveled at Abbas. However, Naser al-Din’s record in the last two years indicates that she is party to the trend to strengthen the oversight of judges, and she has grown closer to President Abbas. Justice Naser al-Din chaired the committee that drafted the new Code of Judicial Conduct for Judges, which was one of the most prominent reforms of the Judicial Council headed by Abu Sharar.[[208]](#footnote-208) Following her appointment as Vice President of the Supreme Court, President Abbas also appointed her to serve as Chairwoman of the Electoral Court he established in anticipation of the elections scheduled for mid-2021.[[209]](#footnote-209) Naser al-Din’s promotion appears to be an attempt to clarify that the purpose of the reforms was not to harm the judiciary, and that judges that did not join the faction of rebellious judges who were forced into retirement, and who are willing to cooperate with the reforms – will gain the president’s trust and could be promoted. A report by an Israeli research institute has already mistakenly crowned Judge Naser al-Din as Chief Justice of the Palestinian Supreme Court.[[210]](#footnote-210) In view of President Abbas’s conduct in the period reviewed in this article, I am not at all certain that the trust Abbas placed in her will remain, if the honorable Vice President acts in a manner he does not like. Abbas’s unrestricted control over the appointment procedures and the termination of judges’ tenure, is like a sword hanging over the judges’ heads, and therefore undermines their independence and their freedom of decision. It seems that considering Abu-Sharar’s advanced age, we will not have to wait long to see whether Naser al-Din will indeed reach the system’s pinnacle, and how she will act with that power if indeed she obtains it.

**10. The Constitutional Court – Is it an Independent Court?**

I argued earlier, that the establishment of the Constitutional Court inherently served as an act, the purpose of which was to restrict the Supreme Court’s freedom. However, did the Constitutional Court really justify Abbas’s expectations, or did it also display signs of independence? We have already seen that when the Constitutional Court was dragged into the arena of the struggle in the petition the judges filed against their retirement, it displayed inklings of independence, when it annulled their forced retirement.[[211]](#footnote-211) A cautious measure of independence was also revealed by the Constitutional Court in a petition filed with the Court by none other than the ousted Supreme Court Chief Justice Ali Mhanna. Mhanna based his petition on the Constitutional Court’s remark regarding the annulment of the Supreme Court’s decision to revoke his appointment, which was made in the course of the hearing of the petition against the appointment of Imad Saleem Saad as Vice President.[[212]](#footnote-212) This remark prompted Mhanna, at the end of October 2016, to petition the Constitutional Court to reconcile the alleged discrepancy between the Supreme Court’s ruling (which set aside Mhanna’s appointment), and the Constitutional Court’s remark that the Supreme Court’s decision should not be relied upon. Mhanna motioned for the Constitutional Court to give precedence to its own ruling over the Supreme Court’s ruling, and order the restoration of the status quo ante, *i.e.,* recognize the validity of his appointment as a judge, for the purposes of his retirement. The Supreme Judicial Council, this time headed by Imad Saleem Saad, expressed strong opposition to the petition, and Mhanna asked one of the judges on the Constitutional Court panel, Hatem Abbas, to recuse himself since he had previously represented Judge Imad Saleem Saad.[[213]](#footnote-213) This time, the Constitutional Court was in no hurry to adjudicate the petition, and about a year later, in January 2018, it dismissed the petition. It held that the power conferred upon it to decide between conflicting judgments of different courts did not apply to a contradiction between a final judgment of another court and a judgment of the Constitutional Court itself.[[214]](#footnote-214)

A review of the Constitutional Court’s rulings reveals a clear tendency to support Abbas’s actions as well as those of his government. The Court’s positions on the judges’ petitions reviewed in this paper illustrate this approach, but these examples reflect a broader phenomenon. The Constitutional Court presents a very conservative and formalist approach which tends to dismiss many petitions, often on points of procedure, ensuring that it does not become a court of appeals to appeal to from other courts, and its rulings on issues requiring protection of human rights and harm to authorities are very cautious, and usually do not grant the injured parties real relief. For example, when owners of land that was expropriated for the establishment of the city of Rawabi near Ramallah petitioned the Court to determine that the expropriation of their land for the benefit of a private company was an unconstitutional infringement of property rights, the Court dismissed the petition on the procedural grounds that the authority to criticize administrative acts is vested in the Supreme Court. It did not seize the opportunity to realize its purpose in the field of human rights, and completely failed to address, even in passing, the question of the violation of property rights.[[215]](#footnote-215) The Court’s conformist approach is also evidenced by a series of more activist minority opinions that currently characterize a small minority of judges, the most prominent of which is Judge Hatem Abbas (حاتم عباس محمد صلاح الدين).[[216]](#footnote-216) Thus, for instance, when an application was submitted to the Court to interpret a section of the Basic Law under which the Chief Justice of the Supreme Court has unlimited jurisdiction to reconsider any bail application submitted before any court, the majority refrained from discussing the matter substantively, for the technical reasons that the attorney representing the applicant did not have ten years seniority as required under the Basic Law to represent a client before the Constitutional Court.[[217]](#footnote-217) Justice Hatem Abbas circumvented the procedural point, crediting the acting lawyer also with the years he had served as a judge, and took the opportunity to determine that said provision of the law was unconstitutional, as it made the Chief Justice of the Supreme Court, as a single judge, a constant appellate court with respect to bail decisions, infringing both the rights of defendants, and the hierarchy of the judicial system.[[218]](#footnote-218) Another controversy placed before the Court concerned the question, which has also been raised in Israel,[[219]](#footnote-219) of what exactly is the status of the police, and which punitive judicial system are police officers subject to – that of the security forces, or the civilian system. Most of the judges reasoned that although it was a force with intermingled military and civilian characteristics,[[220]](#footnote-220) it should be subject to the security forces’ judicial system.[[221]](#footnote-221) This decision seems to have corresponded to the expectations of the head of military intelligence, the head of the *Tantim,* and the president’s legal adviser who instigated the appeal.[[222]](#footnote-222) On the other hand, Justice Abbas and his colleagues Justice Fawaz Ziama, mentioned above,[[223]](#footnote-223) as well as Justice Abd al-Rahman Abu Al-Nasser (عبد الرحمن أبو النصر),[[224]](#footnote-224) ruled that in their opinion, the police are a civilian force,[[225]](#footnote-225) and that police officers should be subject to the civilian system of justice.[[226]](#footnote-226) They explained that the majority opinion could lead to a violation of the rule of law, infringement of equality before the law, and the right of access to the courts, and stressed that the Constitutional Court must prevent this result in order to fulfill its role of “maintaining social balance and creating a balanced environment.”[[227]](#footnote-227) While the majority ruling corresponded to the institutional position, it was apparent that the minority judges saw the potential for human rights violations inherent in the issue before them.

I have produced here only several examples which illustrate the impression which emerges from reading the numerous judgments issued by the Constitutional Court. A broader analysis of its judgments exceeds the scope of this article. The Constitutional Court is extremely cautious, but in a small share of its judgments, and even more so, in the opinions of some of its members, there is some expression of an independent as well as a critical approach toward the government. Both approaches can also be attributed to some extent to Abbas’s decision to amend, by virtue of his temporary power to legislate, the Constitutional Court Law in a way that would strengthen his control over the appointment of judges. The amendment limited the term of office of the President of the Constitutional Court and its judges to a non-extendable six year term, along with the stipulation that the Court will retain a minimum number of nine judges, including the president and deputy, and that every two years three judges will be appointed.[[228]](#footnote-228) Thus, Abbas ensured continually “refreshing” the Court’s composition, through his authority to appoint its judges, thereby undermining one of the main guarantees of judicial independence, which is the securing of tenure until the age of retirement. The aforesaid amendment was made after the judges of the Supreme Court, during the tenure of Chief Justice Sarsour, themselves petitioned the Constitutional Court.[[229]](#footnote-229) Although the Court dismissed the judges’ petitions, Abbas was apparently under the impression that he had to ensure that in the future no new golem would revolt against its creator. As we have seen above, this amendment did not prevent some of the judges from expressing critical views, but systemically, it may reinforce the conformist trend that currently characterizes the judgments of the Constitutional Court.

**Summary**

The Palestinian Authority’s legal system is already a quarter of a century old, but it is still a legal system in the process of formation. Its independence, as well as the principle of the separation of powers, are enshrined as explicit fundamental principles in both the Palestinian Constitution and in legislation. Some of the most important guarantees to ensure independence, such as securing the retirement age, limiting the possibility of dismissing judges, and preventing extraneous interference in judicial work, were also enshrined in legislation. The Achilles’ Heel of judicial independence in the Palestinian Authority used to lie in the president’s power to appoint judges, even though this was conditioned on consultation with the judges’ representatives, and the legislature’s power to establish courts and determine their jurisdiction.

The latter two weaknesses were abused during President Abbas’s term in office to strengthen his grip over the judiciary. At the beginning of his term, Abbas used his power of appointment to position loyal supporters at the head of the system, who usually hailed from the political arena, without consulting the judges’ representatives. These action met with opposition from Supreme Court justices, but the judges’ efforts caused harsh retaliation from Abbas, that resulted in the dismissal of judges, tightening the oversight mechanisms related to their actions, expanding the possibility of forcing them into early retirement, and transferring the Supreme Court’s constitutional powers to a Constitutional Court he established, whose status is higher than that of the Supreme Court; moreover, Abbas has full control of its judges, and, more recently – the transfer of the powers of the Supreme Court judicial review administrative action to a separate and independent system of Administrative Courts. Abbas was able to execute these actions due to, among other factors, his assumption of the legislative powers of the Legislative Council, which ceased to operate when Hamas assumed control of the Gaza Strip. Although it is true that this assumption of power was done directly by authority of the Palestinian Constitution, the party that consistently legitimized it was the Supreme Court, and since its establishment in 2016 – the Constitutional Court. Today, the Palestinian Supreme Court no longer threatens the president and executive branch, and the last word on constitutional issues is given to the Constitutional Court, whose judges serve a limited six-year term. The Constitutional Court is incredibly careful not to infringe on the powers of the president, and the approach most of its judges take to protecting human rights is extremely cautious and hardly ever results in relief for the victims.

The judges fought against these actions by all means at their disposal, including direct appeals to the president, judicial decisions emphasizing the duty to consult judges regarding appointments, petitions to the Supreme Court and the Constitutional Court, and a battle over public opinion through public appeals via the media. In summary, Abbas has been victorious, but the judges’ struggle is astonishing precisely because it takes place in a society led by an autocratic ruler, a society lacking a tradition of democracy. It testifies to courage and integrity, as well as to the role of public discourse, the media, and civil society organizations in safeguarding judicial independence. However, the general picture revealed in this article regarding the history of the judiciary in the Palestinian Authority serves as a warning of what might happen if the basic guarantees of the independence of the judiciary are violated.

1. Associate Professor – The Haim Striks Faculty of Law, College of Management Academic Studies [↑](#footnote-ref-1)
2. It promised “… a constitution ensuring the rule of law and **an independent judiciary**…” (Emphasis added). Palestinian Declaration of Independence November 15 1988; Letter dated 18 November 1988 from the Permanent Representative of Jordan to the United Nations addressed to the Secretary-General, Annex II (November 18, 1988), <https://unispal.un.org/UNISPAL.NSF/0/6EB54A389E2DA6C6852560DE0070E392>. [↑](#footnote-ref-2)
3. Article VII (2) to the Declaration of Principles on Interim Self-Government (September 13, 1993) stipulated that: The Interim Agreement shall specify, *inter alia*, the … independent Palestinian judicial organs.” <https://mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/declaration%20of%20principles.aspx>. [↑](#footnote-ref-3)
4. Signed in 1994 and stipulating that the PA shall be responsible “for the exercise of judicial functions” (Clause 4) that it shall have “**within its authority** … judicial powers and responsibilities” (Clause 5(2)), and that the PA “will administer justice through an **independent** judiciary” (Clause 6(1)(2)) (emphases added) Agreement on the Gaza Strip and the Jericho area, May 4, 1994

<https://mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/agreement%20on%20gaza%20strip%20and%20jericho%20area.aspx> [↑](#footnote-ref-4)
5. S. 8, entitled “**Judicial Review**,” states that “any person or organization affected by an act or decision of the president, the executive branch of the Council, or of any member of the executive branch, who believes that such act or decision exceeds the authority of the president, or aforementioned councillor, or contains an error of law or procedure, will be entitled to apply to the **relevant Palestinian court of justice** for a review of such act or decision.” Similarly, Section 9(6) stipulated that the Council (as the Palestinian Authority was referred to in the agreements) would have “within its jurisdiction, a judicial system of Palestinian courts and tribunals that will be **independent**.” S. 17(3) reiterated the determination that the Council would have “judicial powers and responsibilities” within its jurisdiction. English version: Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Washington, D.C., September 28, 1995, <https://mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/the%20israeli-palestinian%20interim%20agreement.aspx> [↑](#footnote-ref-5)
6. Naseer H. Aruri and John J. Carroll, *A New Palestinian Charter*, 23 JOURNAL OF PALESTINE STUDIES 5, 9, 13, 15 (1994). [↑](#footnote-ref-6)
7. *Ibid*., at 15. [↑](#footnote-ref-7)
8. The Amended Basic Law 2003 (القانون الأساسي المعدل) March 3, 2003 (hereinafter: the “**Basic Law**” The Official Gazette (الجريدة الرسمية) which is the PA’s equivalent of the Israeli “Official Gazette”, hereinafter in this paper the “Official Gazette”) Addendum 2 (March 19, 2003) <https://info.wafa.ps/userfiles/server/pdf/Excellent_2.pdf>. [↑](#footnote-ref-8)
9. Nathan J. Brown, *Constituting Palestine: The Effort to Write a Basic Law for the Palestinian Authority*, 54 THE MIDDLE EAST JOURNAL 25, 33, 35-37 (2000). [↑](#footnote-ref-9)
10. In accordance with Section 43 of the Basic Law. See in detail hereinafter in the text accompanying Footnotes 41 – 43. [↑](#footnote-ref-10)
11. See in detail hereinafter in the text accompanying Footnotes 152 – 158 & 187 – 191. [↑](#footnote-ref-11)
12. The Judiciary Law No. 1 of 2002 (قانون السلطة القضائية) (May 14, 2002) Official Gazette 40 9 (May 18, 2002) <https://www.lab.pna.ps/cached_uploads/download/2018/01/28/40-1517150630.pdf>. [↑](#footnote-ref-12)
13. The Constitutional Court Law No. 3 for 2006 (قانون المحكمه الدستوريه العليا) (February 17, 2006) Official Gazette 62 93 (March 10, 2006), <https://www.lab.pna.ps/cached_uploads/download/2018/01/28/62-1517150632.pdf>. [↑](#footnote-ref-13)
14. “During a special session of the Legislative Chamber: President Abu Mazen vowed (خلال جلسة خاصة للمجلس التشريعي: السيد الرئيس محمود عباس يؤدي اليمين),” Wafa – Palestinian News & Information Agency (January 15, 2005) [https://web.archive.org/web/20201124175041/https://www.wafa.ps/ar\_page.aspx?id=f7JpQRa1215388581af7JpQR](https://web.archive.org/web/20201124175041/https%3A//www.wafa.ps/ar_page.aspx?id=f7JpQRa1215388581af7JpQR). [↑](#footnote-ref-14)
15. “Al-Sourani, Zuhair Musa (1936 -)”, PASSIA, <http://www.passia.org/personalities/777>, (hereinafter: as-Sourani – Biographical details. [↑](#footnote-ref-15)
16. UN GA, Follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict 68 (4.2.2010), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N10/225/83/PDF/N1022583.pdf?OpenElement> (a description of biographical details relating to Abu Sharar. The entry “Issa Abu Sharar (عيسى أبو شرار) Wikipedia (Arabic) <https://ar.wikipedia.org/wiki/%D8%B9%D9%8A%D8%B3%D9%89_%D8%A3%D8%A8%D9%88_%D8%B4%D8%B1%D8%A7%D8%B1>. [↑](#footnote-ref-16)
17. Decision No. 82 for 2005 (July 22, 2005), Official Gazette 61 81 (March 18, 2006), <https://www.lab.pna.ps/cached_uploads/download/2018/01/28/61-1517150632.pdf>. [↑](#footnote-ref-17)
18. “The independent Palestinian Authority (for civil rights – H.Z.) condemns the attack on the Councillor al-Sourani, and views it as an attack on the judiciary and the rule of law (الهيئة الفلسطينية المستقلة تدين الاعتداء على المستشار الصوراني وتعتبره اعتداء على سلطة القضاء وسيادة القانون),” Maan (August 3, 2005) <https://www.maannews.net/news/5163.html>. [↑](#footnote-ref-18)
19. “The Ministry of the Interior: We regret al-Sourani’s statements that the perpetrators of the attack against the Attorney General are known to the security services (الداخلية:نستهجن تصريحات الصوراني بأن من نفذ الاعتداءات ضد النائب العام معروفين لدى الأجهزة الأمنية),” Donia Al Watan (August 7, 2005),

<https://www.alwatanvoice.com/arabic/content/print/26338.html>. [↑](#footnote-ref-19)
20. *Ibid*. [↑](#footnote-ref-20)
21. Al-Sourani – Biographical details, *supra*., Footnote 15. [↑](#footnote-ref-21)
22. The Judiciary Law No. 15 for 2005 (October 11, 2005), Official Gazette 60 33 (November 9, 2005), <https://www.lab.pna.ps/cached_uploads/download/2018/01/28/60-1517150632.pdf> (in the Table of Contents, at Page 3, it states: “Which was repealed” - الذي تم إلغاؤه). [↑](#footnote-ref-22)
23. “The Center held a workshop concerning the law to amend the Judiciary Law (المركز يعقد ورشة عمل حول القانون المعدل لقانون السلطة القضائية),” The Palestinian Center for Human Rights (October 20, 2005), <https://www.pchrgaza.org/ar/%D8%A7%D9%84%D9%85%D8%B1%D9%83%D8%B2-%D9%8A%D8%B9%D9%82%D8%AF-%D9%88%D8%B1%D8%B4%D8%A9-%D8%B9%D9%85%D9%84-%D8%AD%D9%88%D9%84-%D8%A7%D9%84%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A7%D9%84%D9%85%D8%B9%D8%AF/> [↑](#footnote-ref-23)
24. *Constitutional Appeal* 2005/5 **The Association of Arab Lawyers for Human Rights v. The President of the Palestinian Authority** (November 27, 2005), Official Gazette 61 March 18, 2006, at 303, [61-1517150632.pdf (pna.ps)](https://www.lab.pna.ps/cached_uploads/download/2018/01/28/61-1517150632.pdf) (version lacking the reasoning); Atzsam Abadin “*Legal Reading of the Twin Legislative Decisions Concerning the Amendment of the Judiciary Law and the Establishment of the Transitional Supreme Judicial Council*” (قراءة قانونية في القرارين بقانون بشأن تعديل قانون السـلطة القضائية وتشـكيل مجلس قضاء أعلى انتقالي) 57 (Alhaq, November 24, 2019), <https://www.alhaq.org/cached_uploads/download/2019/08/05/a-legal-treatise-on-the-laws-by-decree-amending-the-law-on-the-judicial-authority-law-and-on-the-formation-of-a-transitional-high-judicial-council-1565039800.pdf> (complete judgment). [↑](#footnote-ref-24)
25. “Ms. Saada Al-Dajani, the first female Palestinian lawyer, the first prosecutor, and the first judge (الاستاذة سعادة الدجاني اول محامية في فلسطين واول وكيلة نيابة واول قاضية مستشارة)” Adwwa (July 16, 2020) <https://www.adwwa.com/2020/07/blog-post_52.html>; Mahmed Krizem “*Justice Saada Dajani: The First Female to Reach the Summit of the Palestinian Judiciary*” (المستشارة سعادة الدجاني: أول إمرأة تصل قمة القضاء في فلسطين)” **Al-Hewar El-Matmadan** (December 24, 2006) (Interview with Justice Dajani expressing her opinions on capital punishment cases and the status of women), <https://www.ahewar.org/debat/show.art.asp?aid=84212>. [↑](#footnote-ref-25)
26. Decision No. 276 for 2007 (July 20, 2007), Official Gazette 73 67 (September 13, 2007), <https://library.palestineeconomy.ps/public/files/server/20151105152725-2.pdf>. [↑](#footnote-ref-26)
27. “Justice Abu Sharar Swears the Judge’s Oath before the President (المستشار أبو شرار يؤدي اليمين القانونية أمام السيد الرئيس),” Al-Wafa (December 25, 2005), <http://www.wafa.ps/ar_page.aspx?id=LX6vwFa762354153aLX6vwF>. [↑](#footnote-ref-27)
28. Decision No. 256 for 2005 (December 23, 2005), Official Gazette 63 476 (April 27, 2006), <https://www.lab.pna.ps/cached_uploads/download/2018/01/28/63-1517150633.pdf>. [↑](#footnote-ref-28)
29. S. 9 – 10 of Legislative Decision No. 5 for 2006 Concerning the Amendment to the Ordinary Courts Law for 2001 (February 16, 2006), Official Gazette 62 113 (March 25, 2006), <https://www.lab.pna.ps/cached_uploads/download/2018/01/28/62-1517150632.pdf> (The establishment of a technical bureau for the principles of justice - مكتب فني للمبادئ القانونية). [↑](#footnote-ref-29)
30. Sections 9-10 of Legislative Decree No. 5 for 2006, Regarding the Amendment of the Ordinary Courts Law for 2001 (February 16, 2006), Official Gazette 62 113 (March 25, 2006), [https://www.lab.pna.ps/cached\_uploads /download/2018/01/28/62-1517150632.pdf](https://www.lab.pna.ps/cached_uploads%20/download/2018/01/28/62-1517150632.pdf) (Establishment of a technical office for legal principles - مكتب فني للمبادئ القانونية). [↑](#footnote-ref-30)
31. Decision No. 5 of the Supreme Judicial Council for 2006 Regarding Bylaws for Determining Judges’ Seniority (June 12, 2006), Official Gazette 68 179 (March 7, 2007), [https://www.lab.pna.ps/cached\_uploads/download/2018/01 /28/68-1517150634.pdf](https://www.lab.pna.ps/cached_uploads/download/2018/01%20/28/68-1517150634.pdf). [↑](#footnote-ref-31)
32. Notice from the Supreme Judicial Council on a request forwarded to the government to expropriate certain buildings in Ramallah, Official Gazette 79 176 (February 9, 2009), <https://www.lab.pna.ps/cached_uploads/download/2018/01/28/79-1517150636.pdf>; Similar notice regarding the expropriation of certain buildings in Tulkarm, Official Gazette 80 148 (April 27, 2009), <https://www.lab.pna.ps/cached_uploads/download/2018/01/28/80-1517150636.pdf>. [↑](#footnote-ref-32)
33. Issa Abu Sharar, *Unprecedented Development of the Palestinian Judiciary*, 138 THIS WEEK IN PALESTINE 38, 38 (October 2009),

<http://www.palst-jp.com/eg/pdf/magazine/this_week_in/this_week_in_palestine_October_09.pdf>. [↑](#footnote-ref-33)
34. *Ibid*., at 39. [↑](#footnote-ref-34)
35. *Ibid*., at 39. [↑](#footnote-ref-35)
36. *Constitutional Petition* 2009/2 **The Supreme Judicial Council by agency of the Chairman of the Council v. President of the Palestinian Authority** (July 21, 2009), Official Gazette 117 70 (January 24, 2016), [117-1517150638.pdf (pna.ps)](https://www.lab.pna.ps/cached_uploads/download/2018/01/28/117-1517150638.pdf). [↑](#footnote-ref-36)
37. Constitutional Court Law, *supra.* Footnote 13. [↑](#footnote-ref-37)
38. Section 13 of Legislative Resolution No. 5 for 2006 Regarding the Amendment of the Ordinary Courts Law for 2001, *supra.*, Footnote 30. The section amended Section 37 of the Civil Law Establishment Law of 2001 (قانون تشكيل المحاكم النظامية رقم(5) لسنة 2001م) to stipulate that “The Supreme Court shall temporarily assume all tasks assigned to the Administrative Courts and the Supreme Constitutional Court, until its establishment by law, unless it falls within the jurisdiction of another judicial authority.” [↑](#footnote-ref-38)
39. *Constitutional Petition* 2006/1 **Al-Hamad v. Palestinian Legislative Council** (December 19, 2006), Official Gazette 117 55 (January 24, 2016), [117-1517150638.pdf (pna.ps)](https://www.lab.pna.ps/cached_uploads/download/2018/01/28/117-1517150638.pdf). [↑](#footnote-ref-39)
40. See hereinafter, Footnote 124 and accompanying text. [↑](#footnote-ref-40)
41. Samer Tsubahi Rashid Bnei Odeh, ***The Implications of Palestinian Political Partition on Palestinian Foreign Policy*** (تداعيات الانقسام السياسي الفلسطيني على السياسة الخارجية الفلسطينية) 42-44 (Master Degree Thesis, Al-Najah University, Nablus), [https://repository.najah.edu/bitstream/handle/20.500.11888/13555/%D8%AA%D8%AF%D8%A7%D8%B9%D9%8%D8%A7%D-8%AA%20%D8%A7%D9%84%D8%A7%D9%86%D9%82%D8%B3%D8%A7%D9%85%20%D8%A7%D9%84%D8%B3%D9%8A%D8%A7%D8%B3%D9%8A%20%D8%A7%D9%84%D9%81%D9%84%D8%B3%D8%B7%D9%8A%D9%86%D9%8A%20%D8%B9%D9%84%D9%89%20%D8%A7%D9%84%D8%AF%D8%A8%D9%84%D9%88%D9%85%D8%A7%D8%B3%D9%8A%D8%A9%20%D8%A7%D9%84%D8%AE%D8%A7%D8%B1%D8%AC%D9%8A%D8%A9%20%D8%A7%D9%84%D9%81%D9%84%D8%B3%D8%B7%D9%8A%D9%86%D9%8A%D8%A9.pdf?Sequence=1&isAllowed=y](https://repository.najah.edu/bitstream/handle/20.500.11888/13555/%D8%AA%D8%AF%D8%A7%D8%B9%EF%BF%BD%258%D8%A7%25D-8%EF%BF%BD%20%D8%A7%D9%84%D8%A7%D9%86%D9%82%D8%B3%D8%A7%D9%85%20%D8%A7%D9%84%D8%B3%D9%8A%D8%A7%D8%B3%D9%8A%20%D8%A7%D9%84%D9%81%D9%84%D8%B3%D8%B7%D9%8A%D9%86%D9%8A%20%D8%B9%D9%84%D9%89%20%D8%A7%D9%84%D8%AF%D8%A8%D9%84%D9%88%D9%85%D8%A7%D8%B3%D9%8A%D8%A9%20%D8%A7%D9%84%D8%AE%D8%A7%D8%B1%D8%AC%D9%8A%D8%A9%20%D8%A7%D9%84%D9%81%D9%84%D8%B3%D8%B7%D9%8A%D9%86%D9%8A%D8%A9.pdf?Sequence=1&isAllowed=y); Ephraim Lavie “*Double Palestinian Regime – Double Israeli Policy*”, **Strategic Update** 12(2) 45, 46 - 50 (2009), [https://www.inss.org.il/he/wp-content/uploads/sites/2/2017/01/%D7%A2%D7%93%D7%9B%D7%9F-%D7%90%D7%A1%D7%98%D7%A8%D7%98%D7%92%D7%99-%D7%9B%D7%A8%D7%9A-12-%D7%92%D7%9C%D7%99%D7%95%D7%9F-2-%7%90%D7%95%D7%92%D7%95%D7%A1%D7%98-2009.pdf](https://www.inss.org.il/he/wp-content/uploads/sites/2/2017/01/%D7%A2%D7%93%D7%9B%D7%9F-%D7%90%D7%A1%D7%98%D7%A8%D7%98%D7%92%D7%99-%D7%9B%D7%A8%D7%9A-12-%D7%92%D7%9C%D7%99%D7%95%D7%9F-2-%257%EF%BF%BD%D7%95%D7%92%D7%95%D7%A1%D7%98-2009.pdf). [↑](#footnote-ref-41)
42. For the wording of the Basic Law, see *supra*., Footnote 8. [↑](#footnote-ref-42)
43. *Constitutional Petition* 2007/3 **National Association of Military Retirees** (الجمعية الوطنية للمتقاعدين العسكريين) **v. President of the Palestinian Authority** (May 26, 2009), Official Gazette 117 66 (January 24, 2016), [117-1517150638.pdf (pna.ps)](https://www.lab.pna.ps/cached_uploads/download/2018/01/28/117-1517150638.pdf). [↑](#footnote-ref-43)
44. Decision No. 37 for 2009 (November 16, 2009), Official Gazette 84 21 (December 27, 2009), [النسخةالمعدلة84 نهائي.doc (pna.ps)](https://www.lab.pna.ps/cached_uploads/download/2018/01/28/84-1517150637.pdf) [↑](#footnote-ref-44)
45. See below text accompanying Footnote 153. [↑](#footnote-ref-45)
46. Farid Al-Jallad (فريد الجلاد) Wikipedia

<https://ar.wikipedia.org/wiki/%D9%81%D8%B1%D9%8A%D8%AF_%D8%A7%D9%84%D8%AC%D9%84%D8%A7%D8%AF> [↑](#footnote-ref-46)
47. Decision No. 120 for 2009 (October 15, 2009), Official Gazette 83 (November 1, 2009) [النسخةالمعدلة83 نهائي.doc (pna.ps)](https://www.lab.pna.ps/cached_uploads/download/2018/01/28/83-1517150637.pdf) [↑](#footnote-ref-47)
48. Decision No. 38 for 2009 (November 30, 2009), Official Gazette 84 22 (December 27, 2009) [النسخةالمعدلة84 نهائي.doc (pna.ps)](https://www.lab.pna.ps/cached_uploads/download/2018/01/28/84-1517150637.pdf) [↑](#footnote-ref-48)
49. *Ibid*., *ibid*. See also S. 18 of the Judiciary Law 2002, *supra*., Footnote 12. [↑](#footnote-ref-49)
50. Decree No. 35 for 2009 (October 23, 2009), Official Gazette 83 (November 1, 2009) [النسخةالمعدلة83 نهائي.doc (pna.ps)](https://www.lab.pna.ps/cached_uploads/download/2018/01/28/83-1517150637.pdf) [↑](#footnote-ref-50)
51. Decree No. 1 for 2010 (January 22, 2010), Official Gazette 85 (May 6, 2010) [النسخةالمعدلة85 نهائي3.doc (pna.ps)](https://www.lab.pna.ps/cached_uploads/download/2018/01/28/85-1517150637.pdf) [↑](#footnote-ref-51)
52. *Constitutional Petition* 2009/3 **Pal Consulting and Private Investment Services v. President of the Palestinian Authority** (April 13, 2010), Official Gazette 117 72 (January 24, 2016), [117-1517150638.pdf (pna.ps)](https://www.lab.pna.ps/cached_uploads/download/2018/01/28/117-1517150638.pdf). [↑](#footnote-ref-52)
53. Law No. 4 for 2012 (January 3, 2012), Official Gazette 93 8 (January 25, 2012) [93-1517150637.pdf (pna.ps)](https://www.lab.pna.ps/cached_uploads/download/2018/01/28/93-1517150637.pdf). [↑](#footnote-ref-53)
54. *Constitutional Petition* 2012/6 **Dahlan v. President of the Palestinian Authority** (March 28, 2013), Official Gazette 120 81 (April 26, 2016) [120-1517150638.pdf (pna.ps)](https://www.lab.pna.ps/cached_uploads/download/2018/01/28/120-1517150638.pdf). [↑](#footnote-ref-54)
55. Decision No. 1 of the Supreme Judicial Council for 2010 (October 17, 2010), Official Gazette 90 149 (March 30, 2011) <https://www.lab.pna.ps/cached_uploads/download/2018/01/28/90-1517150637.pdf>. [↑](#footnote-ref-55)
56. Decision No. 44 for 2014 (April 16, 2014), Official Gazette 108 62 (July 15, 2014), [108-1517150638.pdf (pna.ps)](https://www.lab.pna.ps/cached_uploads/download/2018/01/28/108-1517150638.pdf) (Appointment of Justice Tariyah Hazam Mahmad Jud (יثريا حازم محمد جودي); Her picture and the announcement of her appointment on the website of the Ministry of Justice:

<http://www.moj.pna.ps/ar_page.aspx?id=Wg1cCta500622078aWg1cCt>. [↑](#footnote-ref-56)
57. Decision No. 61 for 2014 (May 29, 2014), Official Gazette 108 99 (July 15, 2014), [108-1517150638.pdf (pna.ps)](https://www.lab.pna.ps/cached_uploads/download/2018/01/28/108-1517150638.pdf) [↑](#footnote-ref-57)
58. Ibrahim Ankawi “*Did the Chairman of the Judicial Council Resign or was he Dismissed?*” (إبراهيم عنقاوي هل أقيل رئيس مجلس القضاء الأعلى أم استقال؟), Amad (May 31, 2014), <https://amadps.org/index.php/ar/post/26742/%D9%87%D9%84-%D8%A3%D9%82%D9%8A%D9%84-%D8%B1%D8%A6%D9%8A%D8%B3-%D9%85%D8%AC%D9%84%D8%B3-%D8%A7%D9%84%D9%82%D8%B6%D8%A7%D8%A1-%D8%A7%D9%84%D8%A3%D8%B9%D9%84%D9%89-%D8%A3%D9%85-%D8%A7%D8%B3%D8%AA%D9%82%D8%A7%D9%84>; “*New Judicial Arrangements: Al-Jallad and Mhanna resign, and Sarsour wishes to meet with the president*” Al-Hadath (June 1, 2014) (hereinafter: “**Al-Hadath June 1, 2014**”), <https://www.alhadath.ps/article/656/%D8%AA%D8%B1%D8%AA%D9%8A%D8%A8%D8%A7%D8%AA-%D9%82%D8%B6%D8%A7%D8%A6%D9%8A%D8%A9-%D8%AC%D8%AF%D9%8A%D8%AF%D8%A9-%D8%A7%D9%84%D8%AC%D9%84%D8%A7%D8%AF-%D9%88%D9%85%D9%87%D9%86%D8%A7-%D9%8A%D8%B3%D8%AA%D9%82%D9%8A%D9%84%D8%A7%D9%86-%D9%88%D8%B5%D8%B1%D8%B5%D9%88%D8%B1-%D9%8A%D8%B1%D9%8A%D8%AF-%D9%85%D9%82%D8%A7%D8%A8%D9%84%D8%A9-%D8%A7%D9%84%D8%B1%D8%A6%D9%8A%D8%B3-> [↑](#footnote-ref-58)
59. Donia Al Watan “*President Abbas Decided to Appoint Ali Jamil Mhanna as his Legal Adviser*” (January 27, 2019), <https://www.alwatanvoice.com/arabic/news/2019/01/27/1212244.html>. [↑](#footnote-ref-59)
60. Mhanna’s Facebook page (July 10, 2020), <https://www.facebook.com/%D8%A7%D9%84%D9%85%D8%B3%D8%AA%D8%B4%D8%A7%D8%B1-%D8%B9%D9%84%D9%8A-%D9%85%D9%87%D9%86%D8%A7-468044673330935>, (Mhanna wrote that when he was transferred to the Al-Joniyad prison (in Nablus) in 1984, he participated in a 15 day hunger strike, and was released in the prisoner exchange in 1985). [↑](#footnote-ref-60)
61. Donia Al Watan, *ibid*. at Footnote 59. [↑](#footnote-ref-61)
62. Decree Constituting the 14th Government (May 12, 2012) <https://info.wafa.ps/ar_page.aspx?id=8021>; Amendment of the Aforementioned Decree, Establishment of the 15th Government (June 6, 2012) <https://info.wafa.ps/ar_page.aspx?id=8999>; Decree Constituting the 16th Government (September 19, 2013) <https://info.wafa.ps/ar_page.aspx?id=8999> [↑](#footnote-ref-62)
63. Decree Constituting the 17th Government (The Government of National Consensus) (June 2, 2014), <https://drive.google.com/file/d/1pCOum9uFLEsVjfLDSU1KfuWZOCI2SoFF/view> [↑](#footnote-ref-63)
64. The appointed Minister of Justice, Justice Salim Al-Ska (سليم مصطفى سليم السقا) was born in Khan Yunis in the Gaza Strip and was previously an independent candidate for the Palestinian Parliament. He was a strong opponent of the Oslo Accords. See *ibid*., *ibid*., and also “*The Independent candidate Salim Al-Saka: Calls on candidates to put aside disputes and stresses the possibility of cancelling the Oslo Accords*” **Maan** (January 21, 2006), [https://web.archive.org/web/20140714134732/http://www.maannews.net/arb/ViewDetails.aspx?ID=16850](https://web.archive.org/web/20140714134732/http%3A//www.maannews.net/arb/ViewDetails.aspx?ID=16850) [↑](#footnote-ref-64)
65. Decision No. 70 for 2014 (June 1, 2014), Official Gazette 108 108 (July 15, 2014) [108-1517150638.pdf (pna.ps)](https://www.lab.pna.ps/cached_uploads/download/2018/01/28/108-1517150638.pdf) [↑](#footnote-ref-65)
66. **Al-Hadath June 1, 2014**,*supra.*, Footnote 58. [↑](#footnote-ref-66)
67. *Ibid., ibid*. and “*Justice Sarsour will head the Transitional Judicial Council instead of Al-Jallad*.” (القاضي صرصور يرأس مجلس القضاء مؤقتا خلافا للجلاد), **Al-Fajer TV Station** (June 1, 2014) <https://alfajertv.com/news/1291187.html>. [↑](#footnote-ref-67)
68. Decision No. 70, *supra*., Footnote 65. [↑](#footnote-ref-68)
69. “*The Supreme Judicial Council: First and Foremost – Unifying the Judicial Mechanisms in the Gaza Strip and the West Bank*” (القضاء الأعلى": توحيد الجهاز القضائي في الضفة وغزة ضمن أولويات المجلس), Amad (June 10, 2014), <https://www.amad.ps/ar/post/27834>. [↑](#footnote-ref-69)
70. Official Gazette 112 (April 29, 2015) (Decision No. 21 for 2015) promoting Justice Mazen Sesalem ()مازن سيسالم to the rank of Vice President of the Supreme Court, pursuant to a placement by the Supreme Judicial Council dated February 2, 2015, March 17, 2015), 23 (Decision No. 24 for 2015 promoting Justice Walid El-Hayek (وليد الحايك) to the rank of Vice President of the Supreme Court, pursuant to a placement by the Supreme Judicial Council dated February 2, 2015, March 21, 2015), 26 (Decision No. 25 for 2015 promoting ten Court of Appeals judges to the rank of justices of the Supreme Court in accordance with a placement dated February 17, 2015, March 21, 2015), [112-1517150638.pdf (pna.ps)](https://www.lab.pna.ps/cached_uploads/download/2018/01/28/112-1517150638.pdf). [↑](#footnote-ref-70)
71. Official Gazette 114 43 (August 13, 2015) (Decision No. 89 for 2015 promoting judge Izzat Ahmed Mahmoud Musa Al Ramini (\_عزات أحمد محمود موسى الراميني from the rank of a judge of the Court of Appeals, to the rank of a justice of the Supreme Court, in accordance with a placement by the Supreme Judicial Council dated July 9, 2015, August 31, 2015) [114-1517150638.pdf (pna.ps)](https://www.lab.pna.ps/cached_uploads/download/2018/01/28/114-1517150638.pdf)**.** [↑](#footnote-ref-71)
72. *HCJ* (عدل عليا) 130/2015 **Alhuh v. President of the State of Palestine** 1 (December 7, 2015), <http://muqtafi.birzeit.edu/PDFPre.aspx?PDFPath=Uploads/court_judgment/dec130-2015.pdf>. [↑](#footnote-ref-72)
73. “*Adv. Al-Huh files a petition against the decision to appoint the Chairman of the Supreme Judicial Council*” (المحامي الحوح يطعن بقرار تعيين رئيس مجلس القضاء الاعلى), Salam TV Station, تلفزيون السلام (July 12, 2015), <https://www.salam-tv.net/ar/news/80660.html>; “*The Court, the Judges, and the Justice System in the Shadow of the New Rules – Where Are They Going? With Adv. Na’al Al-Huh* (المحاكم والقضاء ومنظومة العدالة الى اين في ظل القوانين الجديدة؟ مع الاستاذ المحامي نائل الحوح)” Love Radio Station Interview (راديو طريق المحبة), (January 15, 2021), <https://www.facebook.com/RadioTMFM/videos/250271253130486/?__so__=permalink&__rv__=related_videos> (Interview with Adv. Al-Huh at a Nablus radio station. See from minute 2:21:30). [↑](#footnote-ref-73)
74. *HCJ* 130/2015, *supra*. Footnote 72 at 2. [↑](#footnote-ref-74)
75. *Ibid*. at 7. [↑](#footnote-ref-75)
76. *Ibid*. at 4. [↑](#footnote-ref-76)
77. *Ibid*. at 5. [↑](#footnote-ref-77)
78. Ali Abu Habala “*The Supreme Court Afforded Victory to the Principle of the Rule of Law, and Decided to Accept the Petition*” (محكمة العدل العليا الفلسطينية تنتصر لمبدأ سيادة القانون وتقبل بقرار الطعن), Donia Al Watan (December 7, 2015), <https://www.alwatanvoice.com/arabic/content/print/827497.html>

“*The Supreme Court rescinded a Presidential Decision appointing Ali Mhanna as Chairman of the Supreme Judicial Council* (المحكمة العليا تلغي قرارا رئاسياً بتعيين "علي مهنا" رئيسا لمجلس القضاء الأعلى ، وأمان تعقب)” Aman Transparency Palestine (December 8, 2015), <https://www.aman-palestine.org/media-center/1048.html>; Ahmad Al-Ashkar “*A judicial decision cancelling the appointment of the Chairman of the Supreme Judicial Council for Palestine* (قرار قضائي بإبطال تعيين رئيس مجلس القضاء الأعلى في فلسطين)” Al-Mafkhara Al-Canoniyah (December 9, 2015), <http://legal-agenda.com/%D9%82%D8%B1%D8%A7%D8%B1-%D9%82%D8%B6%D8%A7%D8%A6%D9%8A-%D8%A8%D8%A5%D8%A8%D8%B7%D8%A7%D9%84-%D8%AA%D8%B9%D9%8A%D9%8A%D9%86-%D8%B1%D8%A6%D9%8A%D8%B3-%D9%85%D8%AC%D9%84%D8%B3-%D8%A7%D9%84%D9%82%D8%B6/> [↑](#footnote-ref-78)
79. *Constitutional Petition* 2016/19 before the Supreme Constitutional Court, **Mhanna v. Supreme Judicial Council et al.** (January 16, 2018), Official Gazette 140, 60, 61 (February 13, 2018), [140-1522575101.pdf (pna.ps)](https://www.lab.pna.ps/cached_uploads/download/2018/04/01/140-1522575101.pdf) [↑](#footnote-ref-79)
80. Decision No. 4 for 2019 (January 27, 2019) (Appointing Ali Mhanna as legal advisor to the president of the Palestinian State), Official Gazette 152 82 (February 19, 2018), <https://www.lab.pna.ps/cached_uploads/download/2019/04/25/2020-pdf-1556175829.pdf>; Decision No. 74 for 2019 (August 19, 2019) (as abovementioned), Official Gazette 159 13 (September 18, 2019) [159-1576657684.pdf (pna.ps)](https://www.lab.pna.ps/cached_uploads/download/2019/12/18/159-1576657684.pdf) [↑](#footnote-ref-80)
81. Decision No. 10 for 2016 (January 1, 2016), Official Gazette 117 47 (January 24, 2016), [117-1517150638.pdf (pna.ps)](https://www.lab.pna.ps/cached_uploads/download/2018/01/28/117-1517150638.pdf) [↑](#footnote-ref-81)
82. Decision No. 11 for 2016 (January 1, 2016), Official Gazette 117 48 (January 24, 2016), [117-1517150638.pdf (pna.ps)](https://www.lab.pna.ps/cached_uploads/download/2018/01/28/117-1517150638.pdf) “Imad Saleem Saad, Acting Chief Justice of the Supreme Court (عماد سليم سعد قائما بأعمال رئيس المحكمة العليا),” Palestine News (August 16, 2021), <https://www.panet.co.il/article/1496986> (biographical information: Has been a lawyer since 1978, appointed a Magistrate in 1986, and served as President of the Magistrate’s Court in Nablus, President of the Court of Appeals, and a justice of the Supreme Court). [↑](#footnote-ref-82)
83. Decision No. 22 for 2016 (January 21, 2016) Official Gazette 118 48 (February 28, 2016), [118-1517150638.pdf (pna.ps)](https://www.lab.pna.ps/cached_uploads/download/2018/01/28/118-1517150638.pdf). [↑](#footnote-ref-83)
84. *Administrative Petition* 2016/65 **Judge El-Abassi (لقاضي عبدالله موسى غزلان العباسي) v. President of the PA** (May 26, 2016), <https://maqam.najah.edu/judgments/2262/> (The Applicant withdrew this petition on May 26, 2016, and it was therefore dismissed). [↑](#footnote-ref-84)
85. *HCJ* 2016/4 **Judge El-Abassi v. President of the PA** (September 19, 2016), Palestinian Center for Independence of Lawyers and Judges (Musawa) **Justice & Law (Special Edition)** 16 (October 2016), <https://musawa.ps/uploads/431a458860268e7b87aea3b1432ae4f6.pdf> [↑](#footnote-ref-85)
86. S. 24 of the Constitutional Court Law, *supra*., Footnote 13. [↑](#footnote-ref-86)
87. S. 30 of the Constitutional Court Law, *supra*., Footnote 13. [↑](#footnote-ref-87)
88. *Constitutional Interpretation* (تفسير دستوري) 2016/1, The Supreme Constitutional Court (September 18, 2016), Official Gazette Addendum 12 2 (September 26, 2016). [↑](#footnote-ref-88)
89. *Ibid*. at 5. [↑](#footnote-ref-89)
90. *Ibid*. at 6. [↑](#footnote-ref-90)
91. See *supra*., Footnote 72 and accompanying text. [↑](#footnote-ref-91)
92. *Ibid*. at 6 (“لا يعني أنه حكماً يجب الاستئناس به، أو اعتباره مبدأ، أو الأخذ به كحكم يجب الاقتداء به، بل يجب إعدامه وعدم الاستشهاد به”). [↑](#footnote-ref-92)
93. *HCJ* 2016/4, *supra*., Footnote 85, at p. 22. [↑](#footnote-ref-93)
94. *HCJ* 2016/4, *supra*., Footnote 85, at pp. 21-22. [↑](#footnote-ref-94)
95. “General Tawfik Al-Tirawi initiates a vociferous attack against Sarsour, the Chairman of the Supreme Judicial Council, and accuses him of falsifying his date of birth! (اللواء توفيق الطيراوي يشن هجوماً حاداً على رئيس مجلس القضاء الأعلى "صرصور" ويتهمه بتزوير تاريخ ميلاده !),” Donia Al Watan (September 18, 2016). <https://www.alwatanvoice.com/arabic/news/2016/09/18/970292.html> [↑](#footnote-ref-95)
96. The line was not accurately quoted from a poem by the Palestinian poet Mahmud Darwish “كيف أكتب فوق السحاب” (“How I write above the clouds”). For the complete version see: <https://www.alqasidah.com/poem.php?ip=6116> [↑](#footnote-ref-96)
97. “*The fight between Tirawi and Sarsour continues* (تواصل السجال بين الطيراوي وصرصور)” **Maan** (September 20, 2016), <https://www.maannews.net/news/867480.html>; “*The tension between Tirawi and Sarsour intensifies* (تصاعد التوتر بين الطيراوي وصرصور)” Madr News (September 20, 2016), <https://madar.news/%D8%AA%D8%B5%D8%A7%D8%B9%D8%AF-%D8%A7%D9%84%D8%AA%D9%88%D8%AA%D8%B1-%D8%A8%D9%8A%D9%86-%D8%A7%D9%84%D8%B7%D9%8A%D8%B1%D8%A7%D9%88%D9%8A-%D9%88%D8%B5%D8%B1%D8%B5%D9%88%D8%B1/> (Filmed report of their media statements). [↑](#footnote-ref-97)
98. *Ibid*., *ibid*. [↑](#footnote-ref-98)
99. *Constitutional Interpretation* (تفسير دستوري) 2016/3 The Supreme Constitutional Court (November 3, 2016), Official Gazette 126 96 (November 30, 2016), <https://www.lab.pna.ps/cached_uploads/download/2018/01/28/126l-1517150638.pdf> [↑](#footnote-ref-99)
100. *Ibid*. at 100. *Cf*. Mais Qandeel, *Enforcing Human Rights of Palestinians in The Occupied Territory* 339 (Berlin 2018). [↑](#footnote-ref-100)
101. Legislative Resolutions Nos. 26 – 30 for 2016 (January 8, 2021 [*sic*.]), Official Gazette 128 5-8 (January 14, 2017), <https://www.lab.pna.ps/cached_uploads/download/2018/01/28/128-1517150638.pdf> [↑](#footnote-ref-101)
102. *Constitutional Petition* 2016/4 **Dahlan v. Minister of Justice** (June 25, 2018), Official Gazette 145 166 (July 26, 2018), <https://www.lab.pna.ps/cached_uploads/download/2018/08/29/145-1-1535542888.pdf> [↑](#footnote-ref-102)
103. Decision No. 159 for 2016 (October 12, 2016), Official Gazette 126 46 (November 8, 2016), <https://www.lab.pna.ps/cached_uploads/download/2018/01/28/126l-1517150638.pdf>; “*Imad Saleem Saad, in Acting capacity*” *supra*., Footnote 82 (Description of the event of the transfer of powers and authorities at the Supreme Judicial Council building, in the presence of the legal advisor to President Hassan Al-Uri, the Ministry of Justice’s secretary, and several Supreme Court justices as well as members of the Council). [↑](#footnote-ref-103)
104. “*Resignation or dismissal… Justice Sarsour exclusively tells Al-Wattan what happened to him*”( استقالة أم عزل.. المستشار صرصور يروي لوطن حصرياً ما جرى معه) Al Wattan (October 24, 2016), <https://www.wattan.net/ar/news/189737.html> [↑](#footnote-ref-104)
105. *Ibid., ibid.* [↑](#footnote-ref-105)
106. Decision No. 180 for 2016 (December 15, 2021), Official Gazette 128 21 (January 14, 2017), <https://www.lab.pna.ps/cached_uploads/download/2018/01/28/128-1517150638.pdf> [↑](#footnote-ref-106)
107. “*Describes Section 43 of the Basic Law as “Dark” and called to repeal it – the former Chairman of the Supreme Judicial Council, Sami Sarsour, tell Wattan: The amendment of the Judiciary Law should have been enacted by the elected Legislative Chamber*,” Wattan (February 15, 2021), <https://www.wattan.net/ar/radio/332998.html> [↑](#footnote-ref-107)
108. Decision No. 57 for 2016 Establishing the Supreme Constitutional Court (March 13, 2016), Official Gazette 120 53 (April 26, 2016) [120-1517150638.pdf (pna.ps)](https://www.lab.pna.ps/cached_uploads/download/2018/01/28/120-1517150638.pdf) [↑](#footnote-ref-108)
109. *Ibid. ibid.* [↑](#footnote-ref-109)
110. Iyad Qatrawi “*The Palestinian Constitutional Court: Political Implications*” (المحكمة الدستورية في فلسطين: ما هي تداعياتها السياسية?), Al-Monitor (Gaza, April 26, 2016), <https://www.al-monitor.com/ar/contents/articles/originals/2016/04/palestine-abbas-decree-constitutional-court-legality.html> [↑](#footnote-ref-110)
111. See, *supra*., Footnotes 37 -40. [↑](#footnote-ref-111)
112. Al-Monitor, *supra*., Footnote 110. [↑](#footnote-ref-112)
113. Official Gazette 116 36 – 47 (December 27, 2015), <https://www.lab.pna.ps/cached_uploads/download/2018/01/28/116-1517150638.pdf>; Official Gazette 117 55 – 74 (January 24, 2016) (6 Judgments), [117-1517150638.pdf (pna.ps)](https://www.lab.pna.ps/cached_uploads/download/2018/01/28/117-1517150638.pdf); Official Gazette 118 90 – 107 (February 28, 2016) (5 Judgments), [118-1517150638.pdf (pna.ps)](https://www.lab.pna.ps/cached_uploads/download/2018/01/28/118-1517150638.pdf); Official Gazette 119 45 – 93 (March 29, 2016) (9 Judgments), [119-1517150638.pdf (pna.ps)](https://www.lab.pna.ps/cached_uploads/download/2018/01/28/119-1517150638.pdf); Official Gazette 120 81 (April 26, 2016) (One judgment), [120-1517150638.pdf (pna.ps)](https://www.lab.pna.ps/cached_uploads/download/2018/01/28/120-1517150638.pdf) [↑](#footnote-ref-113)
114. *Constitutional Petition* 2006/1, *supra*., Footnote 39 and accompanying text. [↑](#footnote-ref-114)
115. *Constitutional Petition* 2007/3, *supra*., Footnote 43 and accompanying text. *Constitutional Petition* 2009/3, *supra*., Footnote 52 and accompanying text. [↑](#footnote-ref-115)
116. *Constitutional Petition* 2012/6, *supra*., Footnote 54 and accompanying text. [↑](#footnote-ref-116)
117. “*The President of the Court*” The Constitutional Court website (viewed on July 22, 2021) (CV of Judge Prof. Mahmed Abed Al-Ani Ahmad AlHaj Qassem - محمد عبد الغني أحمد الحج قاسم), <https://www.tscc.pna.ps/test/members?type=president> [↑](#footnote-ref-117)
118. “*The Vice President*” The Constitutional Court website (viewed on July 22, 2021) (CV of Judge Assad Batres Mabrek - أسعد بطرس مبارك), <https://www.tscc.pna.ps/test/members?type=vice_presidents> [↑](#footnote-ref-118)
119. “*The Judges*” The Constitutional Court website (viewed on July 22, 2021) (CV of judges of the Constitutional Court), <https://www.tscc.pna.ps/test/members?type=member> [↑](#footnote-ref-119)
120. *The Supreme Constitutional Court – Will It Prevent a Split?* (المحكمة الدستورية الفلسطينية العليا منعا للانفصال?), I24News (April 12, 2016), <https://www.i24news.tv/ar/%D8%A3%D8%AE%D8%A8%D8%A7%D8%B1/middle-east/109434-160412-%D8%A7%D9%84%D9%85%D8%AD%D9%83%D9%85%D8%A9-%D8%A7%D9%84%D8%AF%D8%B3%D8%AA%D9%88%D8%B1%D9%8A%D8%A9-%D8%A7%D9%84%D9%81%D9%84%D8%B3%D8%B7%D9%8A%D9%86%D9%8A%D8%A9-%D8%A7%D9%84%D8%B9%D9%84%D9%8A%D8%A7-%D9%85%D9%86%D8%B9%D8%A7-%D9%84%D9%84%D8%A7%D9%86%D9%81%D8%B5%D8%A7%D9%84%D8%9F> [↑](#footnote-ref-120)
121. Decision No. 43 for 2019 (May 27, 2019), Official Gazette 156 12 (June 16, 2019): <https://www.lab.pna.ps/cached_uploads/download/2019/07/21/156-1563704637.pdf> (Appointment of Judges Hanni Bulus Saleem Al-Natur - هاني بولس سليم الناطور, Adnan Salem Ahmad Abu Varda - عدنان سالم أحمد أبو وردة and Mahmad Abed AlAni Abed Al-Razaq Abed Al-Khalaq Al-Awiei - محمد عبد الغني عبد الرازق عبد الخالق العويوي). [↑](#footnote-ref-121)
122. See hereinafter text accompanying Footnotes 195 – 199. [↑](#footnote-ref-122)
123. See hereinafter text accompanying Footnotes 228 – 289. [↑](#footnote-ref-123)
124. Al-Monitor, *supra*., Footnote 110; The Palestinian Association for Human Rights, “*The Palestinian Supreme Constitutional Court was Established in an Unlawful Manner, and Should not be Used as a Tool for Political Struggles*.” (المحكمة الدستورية الفلسطينية العليا تم تشكيلها بطريقة غير قانونية ولا يصح استخدامها كأداة للمناكفة السياسية), The Association’s website (December 24, 2018), <https://pahrw.org/portal/ar-LB/%D8%AF%D8%B1%D8%A7%D8%B3%D8%A7%D8%AA/16/c/%D8%A7%D9%84%D9%85%D8%AD%D9%83%D9%85%D8%A9-%D8%A7%D9%84%D8%AF%D8%B3%D8%AA%D9%88%D8%B1%D9%8A%D8%A9-%D8%A7%D9%84%D9%81%D9%84%D8%B3%D8%B7%D9%8A%D9%86%D9%8A%D8%A9-%D8%A7%D9%84%D8%B9%D9%84%D9%8A%D8%A7-%D8%AA%D9%85-%D8%AA%D8%B4%D9%83%D9%8A%D9%84%D9%87%D8%A7-%D8%A8%D8%B7%D8%B1%D9%8A%D9%82%D8%A9-%D8%BA%D9%8A%D8%B1-%D9%82%D8%A7%D9%86%D9%88%D9%86%D9%8A%D8%A9-%D9%88%D9%84%D8%A7-%D9%8A%D8%B5%D8%AD-%D8%A7%D8%B3%D8%AA%D8%AE%D8%AF%D8%A7%D9%85%D9%87%D8%A7-%D9%83%D8%A3%D8%AF%D8%A7%D8%A9-%D9%84%D9%84%D9%85%D9%86%D8%A7%D9%83%D9%81%D8%A9-%D8%A7%D9%84%D8%B3%D9%8A%D8%A7%D8%B3%D9%8A%D8%A9/1068/> [↑](#footnote-ref-124)
125. Qandeel, *supra*., Footnote 100, at p. 34. [↑](#footnote-ref-125)
126. See *supra*., Footnote 106. [↑](#footnote-ref-126)
127. Decision No. 42 for 2017 (April 27, 2017), Official Gazette 133 19 (May 29, 2017). <https://www.lab.pna.ps/cached_uploads/download/2018/01/28/133-1517150639.pdf> [↑](#footnote-ref-127)
128. Government Decision No. 1 for 2017 (January 30, 2017), Official Gazette 133 41 (May 29, 2017). <https://www.lab.pna.ps/cached_uploads/download/2018/01/28/133-1517150639.pdf> [↑](#footnote-ref-128)
129. “*Attended by the Prime Minister, Dr. Rami Hamdallah, the Prosecution Service, and the Supreme Judicial Council, the Prosecution Service’s building and the Court in Tulkarm are being inaugurated.*” (تحت رعاية دولة رئيس الوزراء د. رامي الحمدلله النيابة العامة ومجلس القضاء الاعلى يفتتحان مبنى نيابة ومحكمة طولكرم), Prosecution Service’s website (February 12, 2017) <http://www.pgp.ps/ar/NC/LN/Pages/%D8%AA%D8%AD%D8%AA-%D8%B1%D8%B9%D8%A7%D9%8A%D8%A9-%D8%AF%D9%88%D9%84%D8%A9-%D8%B1%D8%A6%D9%8A%D8%B3-%D8%A7%D9%84%D9%88%D8%B2%D8%B1%D8%A7%D8%A1-%D8%AF.-%D8%B1%D8%A7%D9%85%D9%8A-%D8%A7%D9%84%D8%AD%D9%85%D8%AF%D9%84%D9%84%D9%87-%D8%A7%D9%84%D9%86%D9%8A%D8%A7%D8%A8%D8%A9-%D8%A7%D9%84%D8%B9%D8%A7%D9%85%D8%A9-%D9%88%D9%85%D8%AC%D9%84%D8%B3-%D8%A7%D9%84%D9%82%D8%B6%D8%A7%D8%A1-%D8%A7%D9%84%D8%A7%D8%B9%D9%84%D9%89-%D9%8A%D9%81%D8%AA%D8%AA%D8%AD%D8%A7%D9%86-%D9%85%D8%A8%D9%86%D9%89-%D9%86%D9%8A%D8%A7%D8%A8%D8%A9-%D9%88%D9%85%D8%AD%D9%83%D9%85%D8%A9-%D8%B7%D9%88%D9%84%D9%83%D8%B1%D9%85.aspx> [↑](#footnote-ref-129)
130. Report of the National Committee for the Development of the Legal Sector and Supervision of the Judicial Legislation System (اللجنة الرئاسية الوطنية لتطوير قطاع العدالة ومراجعة ومنظومة التشريعات القضائية) (September 4, 2018), <https://ichr.ps/attachment/827/document_1.PDF?g_download=1> [↑](#footnote-ref-130)
131. *Ibid*. at 3. [↑](#footnote-ref-131)
132. *Ibid*. at 4. [↑](#footnote-ref-132)
133. *Ibid*. at 3. [↑](#footnote-ref-133)
134. *Ibid*. at 4. [↑](#footnote-ref-134)
135. *Ibid*. at 5. [↑](#footnote-ref-135)
136. *Ibid*. at 9. [↑](#footnote-ref-136)
137. *Ibid*. at 6-7. [↑](#footnote-ref-137)
138. *Ibid*. at 7. [↑](#footnote-ref-138)
139. *Ibid*. at 7. [↑](#footnote-ref-139)
140. *Ibid*. at 7. [↑](#footnote-ref-140)
141. *Ibid*. at 11. [↑](#footnote-ref-141)
142. *Ibid*. at 11-12. [↑](#footnote-ref-142)
143. *Ibid*. at 17. [↑](#footnote-ref-143)
144. *Ibid*. at 20. [↑](#footnote-ref-144)
145. *Ibid*. at 12. [↑](#footnote-ref-145)
146. *Ibid*. at 11. [↑](#footnote-ref-146)
147. *Ibid*. at 14. [↑](#footnote-ref-147)
148. *Ibid*. at 14. [↑](#footnote-ref-148)
149. *Ibid*. at 15. [↑](#footnote-ref-149)
150. *Ibid*. at 16. [↑](#footnote-ref-150)
151. See *supra.*, text accompanying Footnote 148. [↑](#footnote-ref-151)
152. Decision Concerning Law No. 16 for 2019 Regarding the Amendment of the Judiciary Law No. 1 for 2002 (July 15, 2019), Official Gazette Addendum 20 2 (*Mamtaz* 20) (July 16, 2019), <https://info.wafa.ps/userfiles/server/%D8%A7%D9%84%D9%88%D9%82%D8%A7%D8%A6%D8%B9%20%D8%A7%D9%84%D9%81%D9%84%D8%B3%D8%B7%D9%8A%D9%86%D9%8A%D8%A9%20%D8%A7%D9%84%D8%B9%D8%AF%D8%AF%20%D8%A7%D9%84%D9%85%D9%85%D8%AA%D8%A7%D8%B2%2020.pdf> [↑](#footnote-ref-152)
153. Decision Concerning Law No. 17 for 2019 Regarding The Establishment of the Transitional Supreme Judicial Council (July 15, 2019), Official Gazette Addendum 20 4 (*Mamtaz* 20) (July 16, 2019), <https://info.wafa.ps/userfiles/server/%D8%A7%D9%84%D9%88%D9%82%D8%A7%D8%A6%D8%B9%20%D8%A7%D9%84%D9%81%D9%84%D8%B3%D8%B7%D9%8A%D9%86%D9%8A%D8%A9%20%D8%A7%D9%84%D8%B9%D8%AF%D8%AF%20%D8%A7%D9%84%D9%85%D9%85%D8%AA%D8%A7%D8%B2%2020.pdf> [↑](#footnote-ref-153)
154. Decision No. 75 for 2009 (March 26, 2009), Official Gazette 80 104 (April 27, 2009), <https://www.lab.pna.ps/cached_uploads/download/2018/01/28/80-1517150636.pdf> [↑](#footnote-ref-154)
155. Azam Abadin “*Legal Reading,*” *supra*., Footnote 24, at p. 39. [↑](#footnote-ref-155)
156. *Ibid*. at 39. [↑](#footnote-ref-156)
157. Decision No. 66 for 2019 Concerning The Promotion of Judges of the Court of Appeals to Serve as Justices of the Supreme Court (July 29, 2019), <http://muqtafi.birzeit.edu/pg/getleg.asp?id=17189> (the decision ordering the promotion of the judges who were members of the Transitional Council to serve as justices on the Supreme Court حسين أحمد محمود عبيدات ו - عبد الكريم أحمد عبد الرحمن حنون). [↑](#footnote-ref-157)
158. See *supra*., Chapters B.1 & B.2. [↑](#footnote-ref-158)
159. Decision No. 66 for 2019 (July 29, 2019), Official Gazette 158, 20, (August 19, 2019), [158-1570691265.pdf (pna.ps)](https://www.lab.pna.ps/cached_uploads/download/2019/10/10/158-1570691265.pdf). [↑](#footnote-ref-159)
160. *Constitutional Petition* 2019/17 The Constitutional Court **Judge Hijawi v. President of the Palestinian State** (September 4, 2019), Official Gazette 159 107 (September 18, 2019), [159-1576657684.pdf (pna.ps)](https://www.lab.pna.ps/cached_uploads/download/2019/12/18/159-1576657684.pdf) (hereinafter: “**In re Hijawi**”). [↑](#footnote-ref-160)
161. *Ibid*., *ibid*., and *cf*. *supra*., Footnote 73. [↑](#footnote-ref-161)
162. In re Hijawi, *supra*., Footnote 106, at p. 108. [↑](#footnote-ref-162)
163. In re Hijawi, *supra*., Footnote 106, at p. 111. [↑](#footnote-ref-163)
164. *Ibid*. at 112. [↑](#footnote-ref-164)
165. *Ibid*. at 113. [↑](#footnote-ref-165)
166. “HH Judge Fawaz Ziama,” Supreme Constitutional Court Website <https://www.tscc.pna.ps/test/member_details.php?id=12> (biographical details about the judge: An activist lawyer in the field of human rights prior to his appointment). [↑](#footnote-ref-166)
167. In re Hijawi, *supra*., Footnote 106, at p. 115. [↑](#footnote-ref-167)
168. Decision No. 87 for 2019 Concerning the Early Retirement of Judges (September 15, 2019), Official Gazette 160 10 (October 31, 2019), [160-1576657928.pdf (pna.ps)](https://www.lab.pna.ps/cached_uploads/download/2019/12/18/160-1576657928.pdf); Decision No. 88 for 2019 Concerning the Early Retirement of Judges (September 15, 2019), *ibid*. at 12. [↑](#footnote-ref-168)
169. “Appeal to the Supreme Council concerning the creation of the “transition” at 3 PM, and an expected presidential decision again ordering several judges to retire in the evening: The night of the “Judicial Coup” in Ramallah… Reality or an Exaggeration”! Wattan (September 16, 2019), <https://www.wattan.net/ar/news/290940.html> [↑](#footnote-ref-169)
170. “A Supreme Court justice resigns live on Raya radio (قاضي المحكمة العليا يقدم استقالته عبر أثير راية)” El-Raya (TV and Radio Station (September 15, 2019), <https://www.raya.ps/news/1072228.html> [↑](#footnote-ref-170)
171. “Appeal to the Supreme Council,” *supra*., Footnote 169. [↑](#footnote-ref-171)
172. *Administrative Petition* 292/2012 before the Supreme Court **El-Kilani v. Abu Sharar** (October 19, 2020), <https://maqam.najah.edu/judgments/7433/> [↑](#footnote-ref-172)
173. “Justice Abu Sharar files two complaints against judges Azat Al-Ramini and Osama **El-Kilani** because of the publication of a post (المستشار عيسى ابوشرار يقدّم شكوتين على كل من القاضي عزت الراميني وأسامة الكيلاني على خلفية منشور),” Aks Al-Tiar (عكس التيار) (July 27, 2020) <https://3aks-t.info/news/details/3091/%D8%A7%D9%84%D9%85%D8%B3%D8%AA%D8%B4%D8%A7%D8%B1-%D8%B9%D9%8A%D8%B3%D9%89-%D8%A7%D8%A8%D9%88%D8%B4%D8%B1%D8%A7%D8%B1-%D9%8A%D9%82%D8%AF-%D9%85-%D8%B4%D9%83%D9%88%D8%AA%D9%8A%D9%86-%D8%B9%D9%84%D9%89-%D9%83%D9%84-%D9%85%D9%86-%D8%A7%D9%84%D9%82%D8%A7%D8%B6%D9%8A-%D8%B9%D8%B2%D8%AA-%D8%A7%D9%84%D8%B1%D8%A7%D9%85%D9%8A%D9%86%D9%8A-%D9%88%D8%A3%D8%B3%D8%A7%D9%85%D8%A9-%D8%A7%D9%84%D9%83%D9%8A%D9%84%D8%A7%D9%86%D9%8A-%D8%B9%D9%84%D9%89-%D8%AE%D9%84%D9%81%D9%8A%D8%A9-%D9%85%D9%86%D8%B4%D9%88%D8%B1>, Supreme Court Justice Azat Al-Ramini to Wattan: Sources have informed me that I have been referred for administrative questioning (قاضي العليا عزت الراميني لوطن: أبلغت من مصادر بإحالتي للتحقيق الإداري), Wattan (February 12, 2018), <https://www.wattan.net/ar/news/239850.html> (Justice Al-Ramini relates that he has been summoned for questioning owing to his participation in a workshop organized by civil society organizations in Ramallah concerning “Public Protection of the Justice System” - حماية شعبية للقضاء) [↑](#footnote-ref-173)
174. *Constitutional Petition* 2019/29 at the Supreme Constitutional Court **Al-Muani v. President of the Palestinian State** (December 23, 2019), Official Gazette 163 61 (January 30, 2020), [163-1581505426.pdf (pna.ps)](https://www.lab.pna.ps/cached_uploads/download/2020/02/12/163-1581505426.pdf) [↑](#footnote-ref-174)
175. *Ibid*. at 62. [↑](#footnote-ref-175)
176. *Ibid*. at 64. [↑](#footnote-ref-176)
177. *Constitutional Interpretation Petition* 2020/03 (The Supreme Constitutional Court) (June 23, 2021), Official Gazette 181 58 (July 27, 2021), <https://www.lab.pna.ps/cached_uploads/download/2021/07/27/181.pdf> [↑](#footnote-ref-177)
178. *Ibid*. at pp. 60-62. [↑](#footnote-ref-178)
179. Decision No. 27 for 2020 (June 18, 2020), Official Gazette 168 17 (June 25, 2020), [↑](#footnote-ref-179)
180. Government Decision No. 6 for 2020 Concerning the Regulation of Judicial File and Document Incineration at the Ordinary Courts (June 22, 2020), Official Gazette 169 15 (July 22, 2020), [https://www.lab.pna.ps/cached\_uploads/download/2020/07/22/169-final-مع-شعار-1595411554.pdf](https://www.lab.pna.ps/cached_uploads/download/2020/07/22/169-final-%D9%85%D8%B9-%D8%B4%D8%B9%D8%A7%D8%B1-1595411554.pdf) (in accordance with the recommendation of the Transition Judicial Council dated June 22, 2020). [↑](#footnote-ref-180)
181. Decision No. 41 for 2020 (August 29, 2020), Official Gazette 171 26 (September 24, 2020), <https://www.lab.pna.ps/cached_uploads/download/2020/09/24/171%D9%85%D8%B9-%D8%B4%D8%B9%D8%A7%D8%B1-compressed-1600945323.pdf> (promoting nine judges of the Court of Appeals to serve as justices of the Supreme Court). [↑](#footnote-ref-181)
182. Decision No. 5 for 2021 (January 10, 2021), Official Gazette 175 34 (January 31, 2021), <https://www.lab.pna.ps/cached_uploads/download/2021/02/01/175.pdf> (a decision concerning the forced early retirement of 6 judges in accordance with the recommendation of the Transition Judicial Council). [↑](#footnote-ref-182)
183. Decision No. 1 of the Supreme Judicial Council for 20202 Concerning A Judicial Code of Conduct (March 4, 2020), Official Gazette 168 42 (June 25, 2020), [↑](#footnote-ref-183)
184. *Constitutional Interpretation Petition* 2019/3 (The Supreme Constitutional Court) (October 7, 2020), Official Gazette 172 55 (October 20, 2020), <https://www.lab.pna.ps/cached_uploads/download/2020/10/20/172-%D9%85%D8%B9-%D8%B4%D8%B9%D8%A7%D8%B1-compressed-1603189321.pdf> [↑](#footnote-ref-184)
185. “Wattan interviews the Chairman of the Transitional Supreme Judicial Council, Judge Issa Abu Sharar (وطن تحاور رئيس مجلس القضاء الأعلى الانتقالي المستشار عيسى أبو شرار)” Al-Wattan (September 14, 2020), <https://www.wattan.net/ar/radio/319687.html> [↑](#footnote-ref-185)
186. Decision No. 8 for 2021 (January 12, 2021), Official Gazette 175, *supra*., Footnote 182, at p. 36. [↑](#footnote-ref-186)
187. Decision Concerning Law No. 39 for 2020 (December 30, 2020), Official Gazette Addendum 22 2 (January 11, 2021), <https://maqam.najah.edu/media/uploads/offizial_gazette/-%D8%B4%D8%B9%D8%A7%D8%B1-%D8%B9%D8%AF%D8%AF-%D9%85%D9%85%D8%AA%D8%A7%D8%B2-22-1610357190.pdf> [↑](#footnote-ref-187)
188. Decision Concerning Law No. 40 for 2021 Regarding the Amendment of the Judiciary Law No. for 2002 (December 30, 2021), *ibid*. at p. 9. [↑](#footnote-ref-188)
189. *Ibid*. at Section 8 amending Section 20 of the Judiciary Law. [↑](#footnote-ref-189)
190. See *supra*., text accompanying Footnote 143. [↑](#footnote-ref-190)
191. Decision Concerning Law No. 41 for 2020 Regarding the Establishment of Administrative Courts (December 30, 2020), Official Gazette Addendum 22, *supra*., Footnote 187, at p. 19. [↑](#footnote-ref-191)
192. “*Protest opposite the Legislative Assembly in Ramallah to save the justice system* (اعتصام أمام التشريعي برام الله لإنقاذ القضاء),” Al-Shahed (February 8, 2021), <https://shahed.cc/news/3182/%D8%A7%D8%B9%D8%AA%D8%B5%D8%A7%D9%85-%D8%A3%D9%85%D8%A7%D9%85-%D8%A7%D9%84%D8%AA%D8%B4%D8%B1%D9%8A%D8%B9%D9%8A-%D8%A8%D8%B1%D8%A7%D9%85-%D8%A7%D9%84%D9%84%D9%87-%D9%84%D8%A5%D9%86%D9%82%D8%A7%D8%B0-%D8%A7%D9%84%D9%82%D8%B6%D8%A7%D8%A1>; Ashraf Abu Haya “*The comments made by the Al-Hak Organization concerning legislative decisions from 2020 regarding the amendment of the Judiciary law, the Administrative Courts, and the establishment of the Courts* (ملاحظات مؤسسة الحق على القرارات بقانون لسنة 2020 بشأن تعديل قانون السلطة القضائية والمحاكم الإدارية وتشكيل المحاكم),” Al-Hak (February 10, 2021), <https://www.alhaq.org/ar/advocacy/17892.html> [↑](#footnote-ref-192)
193. Mirfat Zadak “*Palestinian lawyers demonstrate against harming the justice system and “One man’s authority*” (محامو فلسطين يصعّدون ضد المس بالقضاء و"سلطة الرجل الواحد)” Al-Jazira (January 26, 2021), <https://www.aljazeera.net/news/politics/2021/1/26/%D9%85%D8%AD%D8%A7%D9%85%D9%88-%D9%81%D9%84%D8%B3%D8%B7%D9%8A%D9%86-%D9%8A%D8%B5%D8%B9%D9%91%D8%AF%D9%88%D9%86-%D8%B6%D8%AF-%D8%A7%D9%84%D9%85%D8%B3-%D8%A8%D8%A7%D9%84%D9%82%D8%B6%D8%A7%D8%A1>;

February 8, 2021 – an invitation to a demonstration tomorrow, Tuesday, opposite the Court due to Abu Mazen’s intervention: <https://shahed.cc/news/3182/%D8%A7%D8%B9%D8%AA%D8%B5%D8%A7%D9%85-%D8%A3%D9%85%D8%A7%D9%85-%D8%A7%D9%84%D8%AA%D8%B4%D8%B1%D9%8A%D8%B9%D9%8A-%D8%A8%D8%B1%D8%A7%D9%85-%D8%A7%D9%84%D9%84%D9%87-%D9%84%D8%A5%D9%86%D9%82%D8%A7%D8%B0-%D8%A7%D9%84%D9%82%D8%B6%D8%A7%D8%A1> [↑](#footnote-ref-193)
194. Amira Hess “*Abbas tightens his control over the Palestinian system of justice*,” **Haaretz** (January 28, 2021), <https://www.haaretz.co.il/news/politics/.premium-1.9489005?lts=1628761855770> [↑](#footnote-ref-194)
195. Decision No. 42 for 2021 (June 10, 2021), Official Gazette 180 (June 24, 2021), [180.pdf (pna.ps)](https://www.lab.pna.ps/cached_uploads/download/2021/06/24/180.pdf) [↑](#footnote-ref-195)
196. Decision No. 9 for 2021 (January 12, 2021), Official Gazette 175, *supra*., Footnote 182, at p. 37. [↑](#footnote-ref-196)
197. Decision No. 25 for 2021 (March 13, 2021), Official Gazette 178 (April 21, 2021), [178.pdf (pna.ps)](https://www.lab.pna.ps/cached_uploads/download/2021/04/26/178.pdf) [↑](#footnote-ref-197)
198. “*Presidential Decree accepting Judge Farid Jamil Mahmud Aqel’s resignation following his request due to his decision to become a candidate for the elections to the Legislative Assembly*,” Raqam (date unknown), <https://raqamnews.com/post/13166>; “*The Names – The Fatah’s list of candidates for elections to the Legislature*” Al-Jadid Al-Falastini (date unknown), <https://newpal.ps/post/68895/%D8%A8%D8%A7%D9%84%D8%A3%D8%B3%D9%85%D8%A7%D8%A1-%D9%82%D8%A7%D8%A6%D9%85%D8%A9-%D8%AD%D8%B1%D9%83%D8%A9-%D9%81%D8%AA%D8%AD-%D9%84%D8%AE%D9%88%D8%B6-%D8%A7%D9%84%D8%A7%D9%86%D8%AA%D8%AE%D8%A7%D8%A8%D8%A7%D8%AA-%D8%A7%D9%84%D8%AA%D8%B4%D8%B1%D9%8A%D8%B9%D9%8A%D8%A9> [↑](#footnote-ref-198)
199. Decree No. 12 for 2021 (April 30, 2021), Official Gazette 179 (May 26, 2021), <https://www.lab.pna.ps/cached_uploads/download/2021/05/26/179.pdf> (postponement of the elections); Decree No. 3 for 2021 (January 15, 2021), Official Gazette 175, *supra*., Footnote 182 at p. 15 (Decree declaring the elections). [↑](#footnote-ref-199)
200. Haled Al-Talakhma (خالد إبراهيم أحمد التلاحمة) served prior to his appointment as an Associate Professor at the Al-Najah University (<https://fgs.najah.edu/ar/working-staff-ar/764/>) and as a lecturer at the University of Bir Zeit (<https://www.birzeit.edu/ar/faculty-staff/khld-tlhm>). [↑](#footnote-ref-200)
201. Abed El-Naser Abu Samhadana (عبد الناصر عبدالله عيادة أبو سمهدانة) his CV since November 2017 <http://unscin.org/wp-content/uploads/2017/11/%D8%B9%D8%A8%D8%AF%D8%A7%D9%84%D9%86%D8%A7%D8%B5%D8%B1-%D8%B9%D8%A8%D8%AF%D8%A7%D9%84%D9%84%D9%87-%D8%B9%D9%8A%D8%A7%D8%AF%D8%A9-%D8%A3%D8%A8%D9%88%D8%B3%D9%85%D9%87%D8%AF%D8%A7%D9%86%D8%A9-%D8%A7%D9%84%D8%B3%D9%8A%D8%B1%D8%A9-%D8%A7%D9%84%D8%B0%D8%A7%D8%AA%D9%8A%D8%A9.pdf> [↑](#footnote-ref-201)
202. See *supra*., Footnote 121. [↑](#footnote-ref-202)
203. Decision No. 31 for 2021 (April 27, 2021), Official Gazette 179 34 (May 26, 2021), <https://www.lab.pna.ps/cached_uploads/download/2021/05/26/179.pdf> [↑](#footnote-ref-203)
204. “*Meet the most senior female judge and the president of the Election Court* (عرف على أقدم قاضية فلسطينية ورئيسة محكمة قضايا الانتخابات),” Al-Bawaba (March 1, 2021), <https://albawaba24.com/post/1252/%D8%AA%D8%B9%D8%B1%D9%81-%D8%B9%D9%84%D9%89-%D8%A3%D9%82%D8%AF%D9%85-%D9%82%D8%A7%D8%B6%D9%8A%D8%A9-%D9%81%D9%84%D8%B3%D8%B7%D9%8A%D9%86%D9%8A%D8%A9-%D9%88%D8%B1%D8%A6%D9%8A%D8%B3%D8%A9-%D9%85%D8%AD%D9%83%D9%85%D8%A9-%D9%82%D8%B6%D8%A7%D9%8A%D8%A7-%D8%A7%D9%84%D8%A7%D9%86%D8%AA%D8%AE%D8%A7%D8%A8%D8%A7%D8%AA> [↑](#footnote-ref-204)
205. See *supra*., Footnote 93. [↑](#footnote-ref-205)
206. “*Women working in the legal sector face the challenges of society’s perspectives as well as the social integration into it* (المرأة العاملة في قطاع العادلة أمام تحدي نظرة المجتمع والتنشئة الاجتماعية لها),” Wattan (June 15, 2020), <https://www.wattan.net/ar/radio/311935.html> (In a TV interview, Justice Naser Al-Din relates how when she started to work within the legal system she encountered hints of disapproval expressed by some of her colleagues, as well as from the public, for serving as a judge at all); “*A message from Justice Iman Naser Al-Din, a justice of the Supreme Court, on International Woman’s Day* (رسالة من القاضي إيمان ناصر الدين، قاضي المحكمة العليا, في اليوم العالمي للمرأة) UNFPA Palestine Facebook page (March 7, 2019) <https://www.facebook.com/UNFPA-Palestine-234623880063115/videos/%D8%B1%D8%B3%D8%A7%D9%84%D8%A9-%D9%85%D9%86-%D8%A7%D9%84%D9%82%D8%A7%D8%B6%D9%8A-%D8%A5%D9%8A%D9%85%D8%A7%D9%86-%D9%86%D8%A7%D8%B5%D8%B1-%D8%A7%D9%84%D8%AF%D9%8A%D9%86-%D9%82%D8%A7%D8%B6%D9%8A-%D8%A7%D9%84%D9%85%D8%AD%D9%83%D9%85%D8%A9-%D8%A7%D9%84%D8%B9%D9%84%D9%8A%D8%A7-%D9%81%D9%8A-%D8%A7%D9%84%D9%8A%D9%88%D9%85-%D8%A7%D9%84%D8%B9%D8%A7%D9%84%D9%85%D9%8A-%D9%84%D9%84%D9%85%D8%B1%D8%A3%D8%A9/2380420405315564/>; “*The story of the first Palestinian woman to be appointed a judge* (قصة أول فلسطينية تعين بمنصب قاض), Al- Arabiya (March 11, 2015), <https://www.youtube.com/watch?v=w130PBJN81c>; “*33 female judges from a field of 219 judges in the Palestinian judiciary* (33 قاضية من بين 219 قاضياً في حقل القضاء الفلسطيني),” Falestinona – The Official Website of the Fatah in Lebanon (June 8, 2013), <http://www.falestinona.com/flst/Art/6481#gsc.tab=0>. [↑](#footnote-ref-206)
207. Justice Saada Dajani, See *supra*., Footnote 26. [↑](#footnote-ref-207)
208. See *supra*., Footnote 183 and accompanying text; *Cf*. Justice Naser Al-Din: *The Judicial Code of Conduct ensures a judge’s independence and human rights* (المستشارة ناصر الدين: مدونة قواعد السلوك القضائي تضمن للقاضي استقلاليته وللمواطن حقوقه),” Al-Hadath (July 13, 2020), <https://www.alhadath.ps/article/124353/%D8%A7%D9%84%D9%85%D8%B3%D8%AA%D8%B4%D8%A7%D8%B1%D8%A9-%D9%86%D8%A7%D8%B5%D8%B1-%D8%A7%D9%84%D8%AF%D9%8A%D9%86-%D9%85%D8%AF%D9%88%D9%86%D8%A9-%D9%82%D9%88%D8%A7%D8%B9%D8%AF-%D8%A7%D9%84%D8%B3%D9%84%D9%88%D9%83-%D8%A7%D9%84%D9%82%D8%B6%D8%A7%D8%A6%D9%8A-%D8%AA%D8%B6%D9%85%D9%86-%D9%84%D9%84%D9%82%D8%A7%D8%B6%D9%8A-%D8%A7%D8%B3%D8%AA%D9%82%D9%84%D8%A7%D9%84%D9%8A%D8%AA%D9%87-%D9%88%D9%84%D9%84%D9%85%D9%88%D8%A7%D8%B7%D9%86-%D8%AD%D9%82%D9%88%D9%82%D9%87> [↑](#footnote-ref-208)
209. Decree No. 8 for 2021 (March 1, 2021) (Establishment of an Election Court and the composition of its judges), Official Gazette 177 29 (March 18, 2021), [177s.pdf (pna.ps)](https://www.lab.pna.ps/cached_uploads/download/2021/03/18/177s.pdf). [↑](#footnote-ref-209)
210. The Meir Amit Intelligence and Terrorism Information Center, *News of Terrorism and the Israeli-Palestinian Conflict* 14 (February 24 – March 2, 2021), <https://www.terrorism-info.org.il/app/uploads/2021/03/E_037_21.pdf> (the report erroneously refers to the judge as “Chief Justice of the Palestinian supreme court”). [↑](#footnote-ref-210)
211. In re Hijawi, *supra*., Footnote 163 – 164. [↑](#footnote-ref-211)
212. See *supra*., Footnote 92 and accompanying text. [↑](#footnote-ref-212)
213. *Constitutional Petition* 2016/19 before the Constitutional Court, **Mhanna v. The Supreme Judicial Council et al.** (January 16, 2018), Official Gazette 140 60 (February 13, 2018), [140-1522575101.pdf (pna.ps)](https://www.lab.pna.ps/cached_uploads/download/2018/04/01/140-1522575101.pdf). [↑](#footnote-ref-213)
214. *Ibid*. at 62. [↑](#footnote-ref-214)
215. *Constitutional Petition* 2016/12 before the Constitutional Court, **Al-Alam v. President of the Palestinian State** (March 29, 2017), Official Gazette 131 73 (April 11, 2017), <https://www.lab.pna.ps/cached_uploads/download/2018/01/28/131-1517150639.pdf>. [↑](#footnote-ref-215)
216. Has a law degree from the Arab University of Beirut (1975), has since worked as an attorney and has also served as the first Chairman of the Palestinian Bar Association. In 2016 was appointed to the first panel of the Constitutional Court. “HH Judge Hatam Abbas,” The Constitutional Court’s website, <https://www.tscc.pna.ps/test/member_details.php?id=5>. [↑](#footnote-ref-216)
217. *Constitutional Interpretation Petition* 2016/02 Before the Constitutional Court (November 2, 2016), Official Gazette 126 87 (November 8, 2016), [126l-1517150638.pdf (pna.ps)](https://www.lab.pna.ps/cached_uploads/download/2018/01/28/126l-1517150638.pdf). [↑](#footnote-ref-217)
218. *Ibid*. at pp. 90 – 95. [↑](#footnote-ref-218)
219. *Cf*. Aaron Barak “*The Security Supremacy Clause and the IDF*,” **The Elyakim Rubinstein Book – Vol. B** 985, 1008 (Ed. Aaron Barak et al., 2020). [↑](#footnote-ref-219)
220. *Constitutional Interpretation Petition* 2017/01 Before the Constitutional Court (July 10, 2017), Official Gazette 134 55, 57 (July 18, 2017), <https://www.lab.pna.ps/cached_uploads/download/2018/01/28/134-1517150639.pdf>. [↑](#footnote-ref-220)
221. *Constitutional Interpretation Petition* 2018/02 Before the Constitutional Court (September 12, 2018), Official Gazette 148 132, 139 -140 (October 23, 2018), <https://www.lab.pna.ps/cached_uploads/download/2018/12/11/148-1544523094.pdf>. [↑](#footnote-ref-221)
222. *Ibid*. at 132. [↑](#footnote-ref-222)
223. See, *supra*., Footnote 116. [↑](#footnote-ref-223)
224. Prior to his appointment to the first panel of the Constitutional Court, he served as a Law Professor and Dean of the Faculty of Law at the University of Al-Azhar in Gaza. He was a member of the Commission to draft the Palestinian Constitution, and served as Chairman of the Palestinian Bar Association. “HH Judge Prof. Abed Al-Rahman Abu Al-Naser,” Constitutional Court website, <https://www.tscc.pna.ps/test/member_details.php?id=3>. [↑](#footnote-ref-224)
225. *Interpretation* 2017/01, see *supra*., Footnote 220 at pp. 58 – 62. [↑](#footnote-ref-225)
226. *Interpretation* 2018/02, see *supra*., Footnote 221 at pp. 141 – 146. [↑](#footnote-ref-226)
227. *Ibid*. at 144 (“حفظ التوازن المجتمعي وخلق البيئة المتوازنة”). [↑](#footnote-ref-227)
228. Decision Concerning Law No. 19 for 2017 Amending the Constitutional Court Law of 2016 (October 2, 2017), Official Gazette 137 4 (October 15, 2017), <https://www.lab.pna.ps/cached_uploads/download/2018/01/28/137-1517150639.pdf> (Amendment of Ss. 2 & 21 of the original Law). [↑](#footnote-ref-228)
229. See *supra*., Chapter A.5. [↑](#footnote-ref-229)