

Commentary on the Supreme Court of Justice's Decision In Case No. (184/2009)

I: The Facts

The Appellant in this case is (Nader Ahmed Naji Amr) who, upon a decision of the Minister of Education, was appointed as a teacher at one of the schools operated by the Directorate of Education in Hebron District. The aforementioned was assigned to a classified yet non-permanent position to assume that post immediately provided that all prerequisites for appointed were completed. On its session No (18) held on 3/9/2007, the Palestinian Council of Ministers introduced security clearance as part of the pre-requisites for appointment to public office. The Cabinet delegated to the General Personnel Councils (GPC), as the party responsible for the entire procurement process to the public office, the responsibility to contact the security agencies to undertake the security check on candidates to public posts. To this effect, the Secretary General of the Council of Ministers issued a letter No. (2007/AAMW/2115), dated 9/9/2007 to the head of the GPC.

Accordingly, the Palestinian Preventive Security started to send official letters and lists of names recommending the appointment or otherwise of new hires at the Ministry of Education. The Appellant's name was included in the later category (i.e. not recommended for hire). On 3/12/2008 the head of the GPC sent an official letter (No TA/1110429) to the Minister of Education and Higher Education informing him that the recruitment procedures concerning the Appellant had not been completed due to the recommendations to this effect from the security agencies. On this basis, the Minister of Education and Higher Education decided, upon her own decision No. (wt/40/964474035/104), dated 19/1/2009, to suspend the Appellant from work and ordered him to hand over the official property he had in his custody effective on 8/2/2009 due to the non-approval of security agencies of his appointment.

On 18/5/2009, the Appellant made his case to the Supreme Court of Justice that was registered under No. (184/2009) in which he challenged the Minister of Education's decision, No. (WT /40/964474035), dated 19/1/2009, which suspended the Appellant from work as of 8/2/2009. The Appellant also challenged the aforementioned letter by the Chief of JPC No. (T/C110 429), dated 3/12/2008, that informed the Minister that the procedures for appointing the Appellant had not been completed upon recommendation from the security agencies.

In his notice of appeal, the Appellant argued against the legitimacy of the two contested decisions due to many factors, including: violation of the legal provisions, and the Civil Service Law in particular, misuse of authority and position of power, the lack of legal justification for suspension as required by the law, and the fact that both decision are not based on an any legal or reasonable justification.

On 03/17/2010, the Supreme Court of Justice decided by majority votes to dismiss the case appeal citing the court's lack of jurisdiction over the administrative issues. The two dissenting judges also issued their decision to dissent.

Legal Principles Raised by the Decision of the Supreme Court of Justice

Upon deep reflection of both decisions in this case (i.e. the Court's majority decision and the dissenting decision of the two judges), many legal principles were raised that we felt obligated to address and comment on, namely.

1. The jurisdiction of the administrative judiciary in the qualification of contested decisions
2. The ability to appeal or contest appointment decisions for revocation
3. The competent authority in recruitment to public offices.
4. The conditions that must be met by the appealed decision
5. The legal qualification of the Cabinet's decision to incorporate security check into the recruitment process.
6. Inquiry into reasons behind making the contested decision.

I. The Jurisdiction of Administrative Judiciary in the Qualification of Appealed Decisions

The comparative jurisprudence reached a consensus that the administrative court is not bound by the legal **/qualification/characterization** with which that the management qualifies the administrative procedures it takes. The most important is the legal description of that procedure as given by the legislation rather by the management which has no legal authority or mandate to change the legal terminology. This explains why administrative courts have repeatedly and in many occasions discussed the proper legal **qualification** of a decision in accordance with the new legal one.

A good example of this qualification is the disciplinary decisions usually undertaken by the administration under many pretexts that the administration hide behind in order to transfer public employees to new positions or locations. The Supreme Court of Jordan have not previously been the competent court to address such issues including disciplinary actions as for example in case of employee transfer to remote locations (spatial transfer) or transfer to lower positions in the administrative hierarchy.

In its decisions, the Supreme Court of Justice employed certain expressions such as: "if the court finds from the circumstances surrounding the issuance of transfer decisions and the circumstances under which the decision was issued that the administration intended another purpose that the public's best interest, the decision is afflicted by the abuse of power and involves a disciplinary action under pretext". Furthermore, the Court "concludes that this transfer was not taken on the grounds of public interest but rather indicate the administration intent to punish the employee without following the disciplinary action procedures; a matter which defects the transfer decision with abuse of power. Consequently, this abuse becomes the third grounds of appealing the decision to the court against the to transfer these employees" (The Supreme Court of Jordan decision dated 4/2/1996 and cited in the Graduate Magazine of Bar Association, 1997, page 1004).

II. The Ability to Appeal Appointment Decisions for revocation

Administrative judiciary jurisprudence adopts the view that the appealable recruitment decisions are the positive decisions only. Negative decisions (or refusal to appoint) indicate to hiring no person to fill the vacant post, is achieved when the

forward one of the persons for appointment to a vacancy. When a candidate applies for a vacant position, the relevant public administration explicitly or implicitly decides to not appoint him/her to the vacant post. Thus no person can appeal against such a negative decision against his/her non-appointment.

The Supreme Court of Justice has repeatedly pointed out the difference between positive and negative recruitment negative (non-appointment). As published in the Bar Association Magazine, 1994, page 1951, the Court ruling in Case No. (195/92) which was issued on 31/12/1992 reads as follows: “as discussed and agreed upon by this court, the court deems that no stakeholder may appeal a negative recruitment decision to a position s/he deserves but s/he is allowed to appeal the positive decisions only. When a stakeholder lays his/her claim to the appointment more that the other person who is appointed to the same position s/he applied for, the stakeholder may contest the appointment decision rather than the non-appointment. As stated in the notice of appeal submitted by the two appellants as well as in the oral arguments at this court, the claims are in fact aim at appealing a negative decision to their recruitment at a judicial post, because the Minister had not nominated them to the Judicial Council. Given the fact that the aforementioned article (Article (13) of the Code of Judicial Independence which stipulates that such nomination is a necessary procedure to the issuance of an appointment decision), this decision is not considered one of the appealable decisions that could be contested for revocation at the Court of Justice. AS said before on the negative decisions, this case must be dismissed in form).

This conclusion does not apply to the case before us despite its similarity to the case discussed by the Jordanian court. The Palestinian Appellant may not challenge negative recruitment decisions, since he was in fact appointed as a teacher upon a decision of the Minister of Education and Higher Education and did assume his job. In light of evidence presented in this appeal, his appointment was a positive decision that could be challenged by any rival candidate who may claim his entitlement to appointment to this post.

Furthermore, the first of the two contested decisions of the Minister of Education (bearing No WT/40/964477035/104, and dated 19/4/2009) that suspended him as of 8/2/2009, and requested the handover of all item in his custody. This case is in fact about a decision to cancel the first positive appointment decision which resulted in the termination of the Appellant services at the Ministry of Education.

As such, we believe that the Supreme Court of Justice of Palestine wrongly justified its decision to dismiss the appeal for being a non-appealable administrative decision. The Court’s rulings states that “as for the second decision concerning the cancellation of placement and/or appointment based on the GPC letter of the non- approval from the competent authorities placement and/or appointment to the cadre of the Ministry, the court finds that this decision does not constitute an appealable decision at the Supreme Court since it represents it stems from and/or follows the first aforementioned decision”. The Court further justifies that the first appealed decision is an administrative decision that fulfills all its elements and legal conditions. The second decision created a legal effect by terminating the legal status of the Appellant as a “public servant” he acquired by venture of the first decision that appoint him to the ministry. The court’s affirmation that the second decision is (a subsequent

procedure and/or follows from the aforementioned decision), reflects the court's understanding of Appellant's appointment decision to the Ministry as an administrative one. This contradicts the court's rulings concerning the inability to appeal such a decision for revocation.

II. The Competent Authority in Appointment to Public Office

Articles (15) through (18) of the Palestinian Civil Service Law No. (4) of 1998 specifies the competent authority in appointment to public offices. For example, the head of the State Audit and Administrative Control Bureau is appointed by the President of the Palestinian National Authority (PNA) and endorsed of Legislative Council, according to Article (15) of the law. According to Article (16), the high ranking heads (Rank A) of independent governmental departments are also appointed by the President of the PNA upon recommendation of the Council of Ministers. Similarly, high-ranking officers (i.e. deputies, directors-generals and their counterparts outside the governmental departments) are also appointed by the President upon recommendations of the Council of Ministers. Article (17) hinged the appointment of first ranking officers upon a decision by the Council of Ministers following recommendations from the head of the concerned governmental department. Other categories of staff are appointed by a decision of the head of the relevant department, as stated by Article (18) of the law. On the other hand, Article (2) of the law defined "governmental department" as any ministry, department, public institution, authority or any other entity which budget are allocated within or annexed to the PNA's public budget. Civil Service was also identified as employment at any governmental departments in accordance with the provisions of this law.

The aforementioned legislative provisions state that the competent authority to appoint public servants within the other categories specified in Article (18) is in fact the head of the relevant department concerned. This is a term that entails ministers at their ministries and the department or facilities under their supervision and directors of public institutions, as indicated by the recruitment role of the GPC though the delivery, review or objection to appointment decisions.

As stated by Article (25) of the Civil Service Law "the following rules must be taken into consideration in the recruitment for the first time: 1) No appointment shall be made retroactively; a public servant is appointed as of the date of his notification of his appointment by GPC through by the relevant government department and the actual date of assumption of his/her employment. The appointment by null and void s/he fails to commence work within thirty days of the date of the written notification and the post is offered to the next candidate in line if appointment was made upon competition".

The Civil Service Bureau has the mandate to review and object to appointment decisions. Article (7) of the Civil Service Law stipulates that "in order to achieve the goals intended for the development the public administration system in Palestine, the Civil Service Bureau shall undertake the following functions and responsibilities: 1)..... 2).... 3)..... 4) Review appointment and promotion decisions issued by the governmental departments and inform them of the result of such review within fifteen days of the issuance of such decisions. The Bureau has the right to object to what it deems contradictory to the provisions of this law and the civil service regulations in

force. The Bureau shall notify the governmental department the reasons for its objection within thirty days from the date of notification. In case of disagreement between the Bureau and the relevant governmental department, the matter is brought to the Council of Ministers to take appropriate action in accordance with the provisions of this Law”

Undoubtedly, assigning the task of informing relevant parties of such decisions in addition to review and objection of these decisions, all entail that the phrase “head of the relevant department” is another party than the GPC. This is the interpretation adopted by the dissenting decision which stated that “the final arguments of the public prosecution that the final appointment is issued by the GPC and that the Minister of Education’s decision is an affirmative one is an argument that is inconsistent with the provisions of the law for many reasons.

- a) The Civil Service Law No (4) of 1998, explicitly states in Article (18) that the appointment of civil servants, to which the Appellant belongs, is under the jurisdiction of the head of the concerned department concerned.
- b) Paragraph (4) of Article (7) of the Civil Service Law, which set out the functions and responsibilities of the GPC, also provides for reviewing appointment decision as part of these tasks. The aforementioned paragraph states that “review of administrative decisions issued by the competent governmental concerning appointment and promotion that the GPC must be informed of within fifteen days date of issuance. The GPC may object to whatever it deems contradictory to the provisions of this law and the civil service regulations in force.
- c) The phrase “appointment of an employee to civil service is effective as of the date the GPC notifies that person in writing by through the governmental department s/he is assigned to work for” does not imply or indicate that the decision to appoint the employee is under the GPC jurisdiction. It only indicates the GPC sends out a written notification to the employee’s appointment. This statement should be read with the provision stated in paragraph (4) of Article (7) of the aforementioned that grants the GPC the right to object to the appointment decision in case the appointment was made in a manner contrary to law and regulations in force on civil service. In this case the GPC shall inform the concerned governmental department of reasons for its objection within thirty days from the date of notifying the GPC of the appointment decision).

III. Conditions That Must be Met by Contested Decisions

In order for a petition for revocation to be accepted formally, the appealed decision must fulfill a set of formal conditions and requirements since the decision is considered a disclosure of the administration’s individual will due to its power and control bestowed on it under the applicable laws and regulations with a aim of to create a legal effect whenever it was possible and legally permissible.

Administrative decision subject to appeal must therefore be capable of creating a specific legal effect, whether through the creation of new legal status or through the amendment or termination of an existing one. For this reason, the administrative judiciary excludes from among the appealable decisions all administrative procedures

that do not induce any legal effect, such as measures of internal organization, preparatory or preliminary procedures, instructions, advices, notifications, and administrative clarifications. Also excluded from the scope of the appealable decisions are procedures for administrative reporting, procedures to enforce the decision, and any affirmative decisions issued to confirm previous administrative decisions which passed their judicial appeal deadline.

By basing its dismissal of the appeal case on the ground of lack of jurisdiction, it is also noticeable that the Supreme Court of Justice does not consider the first contested decision an administrative one due to its lack of legal or implementation impact. The first decision has not evoked a new legal status for the Appellant. The Court's resolution states that "both administrative justice and jurisprudence define the administrative decision as the disclosure of administration's obligatory control by virtue of the authority granted to it under the laws and regulations with a view to make and/or modify the legal status whenever it was possible or legally permissible. From this definition it can be inferred that the administrative decision subject to appeal before the Supreme Court of Justice would generate a legal effect. The decision to appoint the Appellant have not created any legal effect, since it is devoid of any mention of the place of employment (i.e. name of a city or village), the employee's rank, degree, or working hours that the appellant may use to argue that he sustained damages. Therefore, the court finds that the content of the appointment decision does not qualify as an administrative decision subject to appeal before the Supreme Court of Justice".

In all objectivity, we believe that the Palestinian Court of Justice had rendered a wrongful interpretation. In fact, the appointment decision is an administrative decision in the full sense of the word and did evoke a legal effect since it appointed the Appellant to a classified non-permanent post as a school teacher at the Directorate of Education / Southern Hebron as of the date of commencing work provided that the pre-requisites for appointment are fully completed. The Appellant's new legal status is that of a public servant whereas he is elevated from an ordinary person and an average citizen to the ranks of public official, subject to the provisions of the Civil Service Law and entitled to all the employee's rights, and responsible to carry out all legal obligations pursuant to the law. As such, the Appellant also enjoys the penal protection specified for public servants.

Despite the Court's own phrasing, a deeper look into the following paragraph of the ruling reveals that the Supreme Court does share our view. The court states that "Article (31) of the Civil Service Law stipulate that " if the candidate employee had successfully passed the probation period, the head of the concerned governmental department shall issue a decision to permanently assign him/her to the post as of the date s/he commenced work, and a written notice to this effect shall be sent to the GPC. The Supreme Court of Jordan issued a decision No. (442/2006) page 1770 of 2007 that reads as follows: "Article (59/a) of the Civil Service Law of 2002 requires that the new civil servant appointed for the first time shall be under probation for two years starting from the date of commencement of work. The term of service expires if the civil servant completes the probationary period unless the competent appointing body decides to reinstate him/her to the service". However, since the Appellant has not been issued with any such decision to re-instate him, in this case the Appellant is considered as never been appointed"

It goes without saying that enlisting a public servant under probation necessarily requires the issuance of an earlier decision appointing him/her to the civil service before the start of the probation period. We can not talk about an employee's probationary period and subject him to by its provisions unless an administrative decision was issued earlier for his/her appointment.

The Palestinian Supreme Court reached an unwarranted conclusion by stating that the Appellant is not appointed to the civil service because no decision to reinstate him in his position. That no decision was made to reinstate a civil servant under probation should have been interpreted as signaling the expiry of his/her service, as specified by the provisions of Article (59/a) of the Jordanian Civil Service law of 2002 instead of considering this person as never been appointed, as concluded by the Supreme Court in its ruling.

The Finality of Decisions Subject to Appeal

A decision subject to appeal must also be final. As concluded by the Supreme Court of Jordan, the final decision is the one issued by a competent authority without need for approval by a higher authority. The Journal of Bar Association (1997, page 500), quotes the Court ruling on 09/28/1996 which stated that “the most important aspects of the administrative decision is being made by an administrative authority which has the right to issue it without the need for ratification by a higher authority, and that the decision will affect the legal status of the appellant. That is, the contested decision in itself would generate legal effects).

As for the text of the court ruling under discussion, it is worth noting that the Palestinian Supreme Court of Justice has considered the decision to appoint the appellant a non-final preparatory procedure, and therefore not subject to appeal.

The Court maintains that “finality is one of the most important characteristics and qualities of the administrative decision subject to appeal before the Supreme Court of Justice. All laws governing the Supreme Court of Justice require the decision to be final which means that the decision must fulfill all legal characteristics through exhausting all stages of the process necessary to be issued in an implementable format and capable of producing its intended legal effects without the need for any subsequent procedures. The court considers the decision not final “because the phrase “provided that the prerequisites for appointment are completed” means that there are conditions and missing requirements that the Appellant is asked to finalize. This is indicative of a non-final decision but a preparatory one that is a prelude to the final decision. As such, it is not subject to appeal before the Supreme Court of Justice. Since it is a negative preparatory decision, it remains valid as long as the Appellant does not fulfill the pre-requisites for appointment. In case the Appellant fulfills all these requirements, the decision becomes non-conditional”.

Undoubtedly, the finality or otherwise of the Appellant’s appointment decision depends on the provisions of Paragraph (4) of Article (7) of the Palestinian Civil Service Law No (4) of 1998. This paragraph states that “governmental department shall inform the GPC of administrative decisions for appointment and promotion it makes within fifteen days of issuance. The GPC has the right to object to the decisions it deems in violation of the provisions of this Act and the regulations in force on civil service. The reasons for this objection must be communicated to the

governmental department within thirty days from the date of notification of the decision. In case of disagreement between the GPC and the relevant governmental department, the matter is raised to the Council of Ministers to take the appropriate actions in accordance with the provisions of this law”.

It follows from the foregoing provisions that the authority of the Civil Service Council is the objection to the appointment and promotion decisions rather than their subsequent ratification so that these decisions could be considered final and therefore rendered subject to appeal.

The legislator’s objectives are obvious in limiting the Council’s authority to objection rather than ratification. Article (7), which states that “the councils has the right to object and informs the relevant governmental department of the reasons behind its objection” explicitly limits its role to objection rather than ratification. Therefore, our opinion converges with that of the dissenting decision which stated that “the statement of “appointment of the employee to the service is considered effective as of the date of his notification in writing by the GPC through the governmental department he is assigned to and the date of his assumption of the job” does not entail that the GPC has the authority to make the appointment decision but its role is to notify the employee of his appointment. This statement should be read in tandem with the provisions of Paragraph (4) of Article (7) of the aforementioned law which gives the GPC the right to object to the appointment decision if it contradicts the law and regulations in force concerning civil service, provided that the GPC informs the relevant governmental department of the reasons for its objection within thirty days from the date of notification of the appointment decision”.

The head of the Civil Service issued his letter No. (TA/110429) on 3/12/2008, i.e. thirty days after the expiry of the thirty-day period that the law specified for objecting to appointment and promotion decisions taken by governmental departments, starting as of the date of notifying the GPC in writing of the appointment and promotion decisions.

We therefore concur with t the dissenting decision on this issue and believe it provided an opinion closer to the proper interpretation of the provisions of Article (7) of the Civil Service Law since “the Minister of Education and Higher Education did issue the decision to appoint the Appellant and the thirty days period did expire without GPC objection. Therefore the appointment decision did become effective.”

No doubt that the first appealed decision of the Minister of Education and Higher Education (No PP/40/964474035/104 dated 19/1/2009) to cancel the Appellant’s appointment to the ministry violates the legal rules governing the withdrawal and cancellation of administrative decisions. The general rule in this regard is the prohibition of **generalization/withdrawal** of legitimate administrative decisions that result in rights acquired for others. Also prohibited by the law the **generalization/withdrawal** of illegal administrative decisions during the period of judicial appeal even if the resulted in acquired rights for others. In case the judicial appeal period expires without being challenged, the illegitimate decision becomes immune to appeal and dealt with as a sound administrative decision. However, there are three exceptions to this rule in the following cases: the decision is made on the basis of misinformation and deception on part of the concerned person, the decision is

fraught with significant deficiencies up to a point where it is considered non-existent, and the decision is issued on the basis of restricted authority.

In light of the legal analysis of the Cabinet's decision, we in all objectivity believe that the appointment decision of the Appellant is legitimate and establishes for many acquired rights. This appointment decision evoked for the Appellant an acquired right with all of its elements. Moreover, even if we assume that this appointment decision is not illegitimate, it has become immune with the expiry of the period set for withdrawal or cancellation. This decision should have been dealt with as a sound decision since none of the three grounds for exception are available in this case. The Appellant did not commit fraud or forgery and he did not submit forfeit document to facilitate his appointment. Furthermore, the deficiencies in the appointment decision had reached a point of non-existence, as defined by the comparative administrative judiciary. Finally, the appointment decision is issued on the basis of **decretive** authority rather than on the basis of restricted authority.

V: The Qualification of the Cabinet's Decision to Incorporate Security Check is part of Appointment Process.

The following statements are included within the letter of the Secretary-General of the office of the Prime Minister: (No. 1/A.A.C and / 2115) dated of 9/9/2007) the following phrases (the General Secretariat of the Council of Ministers conveys it highest regards, and informs you the Council of Ministers held its weekly Session (No. 18) on 3/9/2007 dining which it was decided to incorporate security check as part of the appointment process, and that the GPC is responsible for the recruitment process and shall make his with the security agencies in this regard”.

We are quite certain that the letter issued by the general Secretary of Cabinet/Chief of staff of the prime minister's roles that the Appellant's appointment decision was an administrative decision but rather a written notification addressed to the head of the GPC, and thus become devoid of any implementation impact. Therefore, the decision falls under the same category of within the category of administrative actions taken by the management subsequent to the issuance of the administrative decision to inform owners of existence of the decision and its content.

The Cabinet's decision, as alluded to in the letter by the Secretary-General of cabinet, is a collective rather than individual decision. The basic criterion is the separation between public and individual decisions is in terms of the content. If the decision aims at persons in their own features rather than capacities, the decision is said to be a general decision. If addressed the relevant persons in their names and functions, the decision is considered an individual decision regardless of the number of these individuals, that shall refer to Appellants by their name, function, and numbers.

As for the legality of the Council of Ministers' decision, we find ourselves faced with two assumptions or hypothesis, namely:

- 1- **The first hypothesis or assumption:** in case there is no decision issued by the Council of Ministers to include security check into the recruitment process. If such assumption was met, we are facing an applied case of what the

administrative jurisprudence calls “Lack of material presence of the administrative decision”. This phrase is used to describe administrative decisions that have never been issued. Sometimes, individuals can be delusional and believe they are against an administrative decision made by the management. This occurs as a result of the people’s own assumptions that a decision is made or as a result of misperception of the nature of administrative work. For example, a person chooses to appeal to the administrative judiciary to contest the proceedings of a municipal council meeting that have not been taken place.

- 2- **The second hypothesis or assumption:** the Cabinet did take a decision to introduce security clearance to the recruitment process. If this hypothesis is true, a very critical question is raised concerning the legitimacy of such decision. Is it acceptable by law that a Cabinet’s decision introduces a new prerequisite for appointment to those ones enlisted in the Civil Service Law No (4) of 1998? A decision made by the Council of Ministers is legally inferior to the ordinary legislation, and thus may not add new provisions or introduce provisions limiting the scope of its application. Such provisions are dictated by the hierarchy of the state’s legislations, where the lower rules shall not contravene those of the higher ones or violate the provisions of the Constitution.

VI: Inquiry into the Reasons Underlying the Issuance of the Appealed Decision

A careful reading of the Palestinian Court ruling raises a critical legal question concerning legal audit or control by the administrative judiciary on the reasons behind the issuance of the appealed decision, and more specifically, examining the soundness of the legal qualification that the management added to the appealed decision. **Judicial control of or inquiry** into reasons behind the decision has been a controversial concept, drawing both support and criticism from its proponents and opponents, given its impact on narrowing the range and scope of **discretion**. The administrative jurisprudence attempted to justify such audit and create a legal basis to allow for understanding the judicial solutions and their accommodation in the form of basic principles and general provisions.

Causality is a prerequisite of a sound administrative decision which means that the administration does not have free reign or absolute liberty in decision making. A decision must therefore have a reason to justify its existence in the law and reality. The existence of a reason in administrative decision making is a given must, for it is inconceivable for any administration to issue unnecessary or unjustified decisions. The administrative justice and jurisprudence conclude that every administrative decision, regardless if the issuing authority was restricted or discrete, must be based upon a reason requiring its issuance. This reason is both a pillar and a requirement for any issued decision to be considered a sound decision.

Judicial validation over the real factors underlying the contested decision is reflected in the **inquiry into the physical presence of facts**. It must be determined whether the facts relied upon by the administration had in fact taken place. It is a matter of physical verification and validation just as the administrative judge also validates the

qualification of those facts that were verified first or physical presence. Thus, the soundness of the legal qualification must be verified and validated to determine if the fact or facts that the administration had relied upon for issuing the decision are if a legal nature that could justify its issuance from a legal standpoint.

In the Appellant's case between our hands, the Supreme Court of Justice have not tackled the reasons for issuing the contested decision. The court's ruling dismissed the appeal on the ground of lack of jurisdiction, but the dissenting decision in this case did address the legality of the reasons behind issuing the first contested decision which are explicitly stated by the administration as "the non-approval of security agencies on the Appellant's appointment. On this basis, the dissenting decision concluded that such reasons are illegitimate.

The dissenting decision goes on to clarify that "the Civil Service Act No (4) of 1998 is also consistent with the stipulations of Articles (24) and (25) the Basic Law, which specified the conditions that must be fulfilled by a potential holder of any public office, without indicating the approval of security agencies as one of these conditions. The conditions required by the law are the following: the appointee should be in enjoyment of his/her civil rights, un-convicted by Palestinian court of a felony or misdemeanor of moral turpitude or integrity, unless s/he was acquitted and redressed. Moreover, the General Intelligence of 2005 and the Preventive Security Law of 2007 contain no mention of a conditional approval of either agency on the appointment of candidates to public offices. Based on all of the above, the decision issued by the Council of Ministers on 3/9/2007 must be considered non-existent because conditioning appointment to public office to security clearance for potential appointees violates the fundamental rights guaranteed by the Basic Law as well as violating the provisions of the three laws concerning Civil Service, General Intelligence and Preventive Security Act".

Evidently, the dissenting decision justifies its position on the grounds of the illegality of the reasons underlying the contested decision. This position indicates a deeper and true understanding of judicial scrutiny of reasons for administrative decisions as much as it indicates an understanding of the administrative judges' role as guardians of the principle of legality in the State. The administrative judges safeguard personal rights and freedoms without neglecting the public interest which will not be achieved unless the administration respects the principle of legality.

Finally, in objectivity of a university professor and fairness of a judge, we must conclude that the Palestinian Supreme Court of Justice bypassed the legal fact in its qualification of the first contested decision when is designated as "preparative or preliminary". In fact, the first contested decision fulfills all elements and conditions of the administrative decision, which therefore, make the decision subject to appeal before the Supreme Court.

Nevertheless, the Court agreed with this fact when it did not consider the GPC letter an administrative decision subject to appeal. We believe that the correct legal qualification of this letter is "an administrative notification" though which the head of the CPC informed the Minister of Education and Higher Education on the security agencies non-approval of the Appellant's appointment. As such, this letter is devoid of any impact of execution or implementation since the letter has not itself abolished

the Appellant legal status acquired by virtue of the first decision of appointment. The first contested decision did in fact abolish this legal status.

In line with our conclusions, we believe that the dissenting decision contained legal arguments and evidence for the qualification of the first contested decision. These arguments have been capable to justify the qualification and findings and support its inquiry into and audit of the reasons underlying the making of this decision.

Associate Professor Ali Khattar Shatnawi
Professor of Public Law, Faculty of Law
Amman Arab University