

# Lawyers trainees requirements in the Jordan Bar Association (Case Study)

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## **Abstract**

*Case Study about Comment on the judicial decision of the Jordanian Supreme Administrative Court in case No. 353/2018 in relation to the violation of the training requirements of the articulated clerk stipulated in the Law of the Jordanian Bar Association. regards violated his registration requirements stated in Article 8 of the Bar Association Act No. 11 for the year of 1972 For not working full-time for the training, not working in his professor's office and the lack of competence in practicing attorneyship in office and the courts during his training”.*

**Keywords:** *Case Study, Jordanian Supreme Administrative Court, Jordanian Bar Association, Hashemite Kingdom of Jordan.*

## **I. INTRODUCTION**

### **The legal principle:**

In the Judicial decision No. 353/2018, on 2nd January 2018, the Jordanian Supreme Administrative Court stipulated that “ A Jordanian articulated clerk who does not reside actively in the Hashemite Kingdom of Jordan during his training is considered a part-time trainee in the practice of Attorneyship and therefore the Council of the Jordanian Bar Association has the right to cancel the registration of any lawyer not dedicated to the practice of attorneyship, as it is a violation of the training requirements stipulated in the Law of Jordanian Bar Association No. 11 and its amendments for the year of 1972.

### **Facts of the case:**

The facts of this case are that (A.H) is a Jordanian national and is a registered lawyer in the bar association records. He was registered as a articulated clerk on 18 March 2015 by decision No. 9636 issued by the Council of the Jordanian Bar Association. The Council of the Jordanian Bar Association decided under its resolution No. 11894, on 29 April 2017, to transfer the name of (A.H) from the articulated clerks records to the bar association records after fulfilling the required conditions, submitting all the papers and documents required to be duly submitted and payment of legal fees as he also sworn in .However, the Bar Council have subsequently found out that when (A.H) was registered as a professor and a lawyer, he violated one of the registration

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requirements of the bar association records on the basis of saying that (A.H) was not a full-time trainee in the attorney ship, since during the training period he was leaving outside Jordan to the United Kingdom to pursue a master's degree in law at one of the prestigious universities, as he departures reached the total of 7 months out of 24 months and because he violated a registration requirement this decision was issued against him.

On 29 February 2018, (A.H) filed a suit with the number 105/2018 before the Jordanian Administrative Court to challenge the decision of the Council of the Jordanian Bar Association, but decision No. 2787, issued on 29 January 2018, which includes the reversal of the registration of the claimant individual in the bar association records No. 11894, on 29 April 2019, for failure to fulfill the training requirements stipulated in the Bar Association Law. However, the Administrative Court issued dismissed the case of (A.H) and supported the decision of the Council of the Jordanian Bar Association.

On 1 August 2018, (A.H) appealed the decision no. 105/2018 issued by the Administrative Court to the Supreme Administrative Court<sup>4</sup> in case No. 353/2018, where the court issued its decision on 2 January 2019 (subject of this comment) which stated that “The appellant has left the country several times during his six months and eight days training period to the United Kingdom to complete a master's degree in law, and thus violated his registration requirements stated in Article 8 of the Bar Association Act No. 11 for the year of 1972 For not working full-time for the training, not working in his professor's office and the lack of competence in practicing attorney ship in office and in the courts during his training”.

#### **Comment on the decision:**

Article 8 of the Law of the Bar Association and its amendments No. 11 for the year of 1972 stipulates that “the individuals who applies for registration in the bar association records must be an actual Resident in The Hashemite Kingdom of Jordan”. Article 10 of the internal bylaws of the bar association and its amendments for the year of 1966 also stipulated that “the articulated clerk has to stay in his teacher's office and his law firm tasks through all his training period except on the day he fails to attend for a legitimate excuse”<sup>5</sup>.

It should be noted that these texts are clear and beyond any doubt that these texts require full and complete time of training by the articulated clerk and that it is one of the registration requirements in the bar association records that applicant is required to fulfill the training requirements stipulated in the law of bar association.

The dispute related to this decision is about the residency in the Hashemite Kingdom of Jordan and full-time training on attorney ship. However, the purpose of leaving the country is that he received a scholarship to the United Kingdom to pursue a masters in law which he successfully obtained, and since the purpose is to seek knowledge and to learn more about the legal profession which gained him more experience and knowledge in the field of law, especially since any lawyer who is still under training is allowed to join any university to

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<sup>4</sup> Pursuant to the Law of the Jordanian Administrative Court No. (27) for the year of 2014, there is two levels of jurisdiction where the administrative Court is considered a first instance court (formerly the Supreme Court of Justice) and what is new about this is the establishment of the Supreme Administrative Court, which is competent to hear appeals issued by the Administrative Court.

<sup>5</sup> Articles (8), (25) and (17) of the Bar Association Law No. (11) of 2017 and its amendments and article (10) of the internal bylaws of the Bar Association for the year of 1966 and its amendments stated that The legislator gave great importance to the training process in the legal profession and specified the method of training and its requirements and provisions, for more see the aforementioned laws.

complete graduate studies. The duration of the training in such cases shall be one year<sup>6</sup>. Hence, the Supreme Administrative Court was mistaken when it did not interpret the legal text in a manner consistent to the legitimacy.

As to the residency requirement of an articulated clerk in the Hashemite Kingdom of Jordan, the Supreme Administrative Court has violated the legal provisions provided in the Jordanian Citizenship and Foreigners Act and the Jordanian Residence and Foreigners Nationals Affairs Act No. 24 for the year of 1972. It also violated the interpretation of the Interpretation of Laws Dewan of the Jordanian provision<sup>7</sup> regarding the definition of an ordinary residence or habitual residence in resolution No 121 which stipulated that (residency means that the individual shall take a place in Jordan to be a place residence and a center for his legal affairs and his business and the following conditions must be present for this place to be a place of residence; first, The physical element which is the residency or the physical presence in the country. Second, the voluntary element which is having no intention to choose another home).

Considering that leaving the Hashemite Kingdom of Jordan was to study, this situation shall be considered as temporary residence that would not affect his permanent residence, because in this case the Permanent Residence in the Hashemite Kingdom of Jordan is a permanent and constant legal bond which does not fade this for any reason except his own serious will to put an end to that bond by taking another place for his permanent residence<sup>8</sup>.

Whereas the intention of leaving the Hashemite Kingdom of Jordan was only for the promotion of academic excellence and to obtain a master's degree in law, which has a major role in giving the articulated clerk considerable experience in the practice of law, and was never intended to permanent residence in the country of study, but a temporary residence which has no effect on his permanent residence in the Hashemite Kingdom of Jordan, as long as he did not choose to permanently reside outside the Kingdom<sup>9</sup>.

This is further supported by the fact that during his training period he returned to the Kingdom at the first opportunity available to pursue his training at his professor's law firm during his occasional absences, and submitting his exams and fulfilling all the requirements of a trainee, where his period of residence in the Hashemite Kingdom of Jordan is one year and four months out of two years. This period is an evidence that it is an actual permanent residence, and therefore the articulated clerk has fulfilled the residency requirement of the subject of this comment.

The Supreme Administrative Court had to overturn the ruling of the Administrative Court and abrogate the decision taken by the Bar Association and the judge to cancel the registration of the articulated clerk for not fulfilling a training requirement, namely residency in the Hashemite Kingdom of Jordan.

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<sup>6</sup>Article (27) of the Bar Association law specifies the duration of attorneyship training for the holder of a master's degree in law or a doctorate in law, provided that their training duration is one year.

<sup>7</sup> A special Dewan has been established in the Hashemite Kingdom of Jordan to interpret the laws and interpret the ambiguity in any legislation provided that the courts have not previously been subjected to it in one of its jurisdictions. This is when the Prime Minister, who has the sole right to request the interpretation of any legislation, the Dewan is composed of the President of the Court of Cassation (presiding), and the membership of two of its judges, one of the senior officials of the administration appointed by the Council of Ministers and a member of the senior officials of the ministry related to interpretation delegated by the minister concerned.

<sup>8</sup> See Supreme Administrative Court Decision No. (60/2019) dated 3/4/2019, Qistas Publications.

<sup>9</sup> Ibid (5)

## **II. Conclusion:**

We don't agree with the Supreme Administrative Court decision related to the subject of this comment that the residence should be confined only within the borders of the Hashemite Kingdom of Jordan even if the departure of the country to a state of necessity such as enrollment in foreign universities to study graduate studies in law, as this case does not make the articulated clerk lose his residency and does not affect his permanent residents since it is temporary. Moreover, these decisions do not serve the public interest and harm lawyers and the legal profession and prevents the student from getting benefited of what he may receive in the promotion and development of his professional level of his studies, which leads to the violation of the goals allocation rule.

Accordingly, the court had to decide the reversal of the contested judgment (subject of comment) and the rescission of the complained decision issued by the Bar Association Council.

## **References:**

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