



Arab Center for the Development of the Rule of Law and Integrity-ACRLI

“Promoting the Rule of Law and Integrity in the Arab World” Project

A background paper about the State of the Judiciary in Lebanon

Prepared by: **Dr. Antoine Msarra and Mr. Paul Morkos¹**
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Lebanon”
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Antoine Msarra is a professor at the Lebanese University, the Coordinator of Research at the Lebanese Institution for Permanent Civil Peace and the President of the Lebanese Association for Political Science.

Paul Morkos is a professor lecturing on law and human rights in the universities of Beirut, a legal consultant and coordinator with the “Observatory of the Pioneering Court Judgments and Judiciary Practices” of the Lebanese Institution for Permanent Civil Peace.



Human rights in Lebanon and the Arab World were always linked to the establishment of an efficient independent judicial authority that guarantees the rights of citizens and public freedoms. There is no indication that such authority is established today in Lebanon and to a larger extent in the Arab World. Below is a presentation of the following topics which contribute to addressing the backgrounds and starting points of establishment of such independent, efficient and guarantee authority:

- 1- An analytical description of the Lebanese judicial system- overview, main distinguishing features and characteristics, historical development and national role.**
- 2- The appropriate political, economic and social context.**
- 3- Overview of the issue of reform of the judicial system.**



1

An analytical description of the Lebanese judicial system Overview, main distinguishing features and characteristics, historical development and national role

The Lebanese judicial system was, in terms of provisions, jurisprudence, structure and building of the judicial pyramid, influenced by the French system in particular, although it inherited some provisions and regulations from other European and oriental systems. This is the first formal distinguishing feature. The second feature of the Lebanese judicial system lies in the diversity of the judicial bodies, including administrative courts, judicial courts², military courts and religious courts (personal status matters), in addition to a number of judicial bodies, courts and special councils, such as the State Audit Bureau (financial courts) and other bodies. Although the judiciary is an independent authority, the Lebanese judicial system is bound by the written legislative text issued by the legislative authority represented by the Parliament³, which text is not subject to any interpretative judgment in the event where an explicit provision is set forth, pursuant to the principle of separation of powers, as provided for in the Lebanese Constitution⁴.

Despite these restrictive considerations, the Lebanese judiciary, resorts, when the provisions so allow, to the principles of justice and fairness and to foreign advanced interpretative judgments on human rights, democracy and the protection of public freedoms. And despite the constituent and structural problems and the challenges of administrative and political corruption facing the Lebanese State and still prevalent to date, not to mention the many occupations and tutelages of the country, the Lebanese judiciary kept historically its significant role at the level of separation of powers and preserved its dignity to a considerable extent, if compared to any judiciary that went through major national crises such as those faced by the Lebanon. Although we acknowledge that that which is decisive in and the real measurement of the features and characteristics of the judiciary remain the comparison thereof with the advanced judiciary in liberal systems that guarantee the rights of individuals and the public freedoms, it is necessary to

² This dualism (administrative-judicial) was consecrated specially at the start of year 1953.

³ The authority of the judge is considerably restricted as with the death sentences rendered in Lebanon in pursuance of the law provisions, even if they are contrary to the convictions of the judge who tends, personally, to avoid passing a death sentence on the accused.

⁴ This is followed by the impermissibility of issuing provisions in the form of regulations.



say that the Lebanese judiciary, at the Arab comparative level, is deemed to be independent to a large extent, if compared to the status of the judiciary in other Arab regimes that do not keep a venue at all and do not confer any status to courts and to judges.

Despite this praise reserved in principle of the Lebanese judiciary, there are no signs of establishment of an efficient and independent judicial authority in Lebanon, whereas there has been a slow but marked improvement in this regard in other Arab countries, mainly Egypt, with the increase of the role of judges following the latest general elections (“revolution of the judges”)⁵, and Iraq (the trial of the former president Saddam Hussain and his colleagues by Iraqi judges)⁶.

However, this establishment description does not deny the existence of Lebanese judges with a higher degree of courage and independence, passing bold judgments in issues of human rights and democratic practice that often remain unpublished or inaccessible or remain solitary amid many court judgments and technical comments thereon. The judges are the solution today to many of Lebanon’s problems, where corruption has many faces whose number is increasing continuously: “Vote-catching, bribe, illegitimate enrichment, money laundering, abuse of power, arbitrary management, random detention, terrorist attacks, down to social and economic crimes that have become normal but are not less dangerous and are proof of deep corruption: tampering with the distribution of the electric current, abuse of the general services network, expired food supplies, pollution of the drinking water and rivers and sea, crimes against the environment, etc.....all of which, without any exception, fall within the authority of the courts and are the core work of the judiciary⁷, like the experiment of the Italian judiciary (“Clean Hands” Campaign)⁸.

⁵ Mohammed Al-Rumaihi, “Experiment of the Egyptian Courts”, *Annahar*, 28.12.2005, p.9.
See also Jihad Azzein “Egyptian Model of Change: From the Officers’ Club to the Judges’ Club”, *Annahar*, 19.05.2005, p.19, and the comment of Tarek Ziad, the former president of the Judicial Inspection Board, *Annahar*, 25.05.2005, p.19. For more details: Report by the Arab Center for the Development of the Rule of Law and Integrity and the International Institute for Electoral Systems on the status of the judiciary in Egypt, 2004.

⁶ Despite the many reservations on the said Arab experiments.

⁷ “Level of Corruption in Lebanon”, according to the index of Transparency International, *Annahar*, 19.10.2005, p.8.

⁸ For more details about the experiment of the Italian judiciary: <http://www/Chilton.com/paq/archive/PAQ-96-254.html>



Indeed, George Nassif wrote: “.....the rampant corruption in the Arab World is different from that of the western countries. Their corruption is curbed by institutions, laws and courts, and by a civil culture having an aversion to corruption and condemning the corrupt, dismissing them from their positions and subjecting them to legal punishment....

The “Cedar Revolution” carried out by Lebanese aspiring to national dignity and sovereignty will remain incomplete, cut short and partial if not accompanied by a revolution against corruption of the state, in all utilities and at all levels.”⁹

The question often asked is: How can the Lebanese judiciary act freely when suffering from the interference of politicians and not owning the necessary tools for investigation and achieve the required deterrence? Therefore, what is required is the “reform of the judiciary” and leaving major crimes to international courts. These are the questions raised today. They may be legitimate, but are not correct for the following considerations:

- a- The independence and immunity of the judiciary are achieved from the inside not to the outside: The political authorities, be it the legislative or the executive, cannot be relied on to assist the judiciary, for constitutional reasons both in principle (separation of powers) and practical (involved politicians). Therefore, the interest of the political authority, both bodies and members, is definitely not in agreement with the independence of the judiciary.
- b- The efficiency of the judiciary is the responsibility of the judges as individuals: The judicial institution as a legal person represents the *façade* under the wing of which individual judges are working as the *crane*. Although the “single entity” of the said institutions and members thereof cannot be divided, one cannot deny that, achieving justice, in the sense of “conscientiousness”, the writing and “pronouncement” of judgments and assuming liability for them, is performed by judges as individuals and not by the institution as a body.
- c- The international courts are exceptional courts: they can only be relied on in exceptional events and specific crimes and circumstances. The national courts that constitute a permanent guarantee cannot be

⁹ George Nassif, Nassif, 04.01.2006, p.4.



replaced by the circumstantial and exceptional guarantee offered by international courts.

- d- The remuneration of the judge is not only limited to financial allowances: In a number of occupations, remuneration is merely financial. A judge, however, receives fees and financial allowances in return for his time and efforts and to enable him to live decently and independently without looking for other sources of livelihood. This is important and cannot be minimized. Nevertheless, the maximum remuneration which the judge is supposed to expect is another different thing, i.e. moral remuneration: Spreading justice and giving reassurance to the citizens. For this reason, he was given the authority to rule “in the name of the Lebanese people”, for the Lebanese people. The success and respect offered to a judge are conditional upon the amount of credit he is given for passing judgments that are bold and of quality, in defense of the rights of the people.

In this regard, we recently noted the rendering of pioneering judgments on human rights in the following fields (see the enclosed preliminary sample of judgments):

- Bold and precursor judgments that transcend the formal and textual interpretation of the law or the violation of previous interpretative opinions to the end of giving precedence to the spirit and aim of the legal rule in terms of impartiality, achievement of justice and giving every person their due right.
- Judgments rendered in essential rights-related matters such as: Defense of freedoms and basic rights like religious freedoms, freedoms of the press, annulment of illegal tracing, removing constraints put by official authorities upon non-government organizations, annulment of confessions given by accused persons under duress...

If courts judgments that are bold and of quality seem to be low in number, this does not mean that they are inexistent, but emphasizes the conviction that they should be encouraged and increased, especially that, today, judges are divided into two categories:

- A generation of judges who lived through two or more generations and were prevented during the war or by prevailing practices, from rendering maximum judgments in the field of defense of democracy,



freedoms and human rights. These are on the verge of retirement and have no choice but to leave a number of judgments of quality that can be attributed to them and contribute to their reputability.

- A growing generation of young male and female judges who are sick of war scenes and aspire to offer a new bold judicial experiment.

There are a small number of judges who do not have such ambitions and the fate of whom¹⁰ will be decided by the Higher Judicial Council. They do not obstruct the general judicial course. However, there is a legal paradox about the method of application of Article 95 of the Legislative Decree No. 150 known under the name of the Law of the Judicial Courts¹¹.

Many judges of the old and new generation are looking forward to applying the principles of democracy and human rights. They are not concerned with any narrow personal ambition whose price is to stay in an underdeveloped country. They are not deterred from passing bold judgments, especially if they have won the attention and follow up of the public opinion and the approval of society. Therefore, there is great need for the support of society to encourage the passing of judgments that are bold and of quality, based on the following:

- a- The judicial authority is the guarantee: The judiciary is supposed to be the institution which guarantees that there will be no going back to the days of war. In fact, the judiciary acts as a deterrent for any practices violating the understanding of “a state that protects the rights of its citizens”, both inside and outside the constitutional institutions, and therefore, ensures accountability.
- b- Bringing the judiciary closer to people and building communication: in the minds of people, the concept of judiciary is linked to penalties, the imposition of fines and imprisonmentinstead of being an oasis of rights and justice. The public may have formed the opinion that the judiciary is merely an oppressive authority and a tool used by authorities, or at least a mere “mechanic” system that may not have a humane perspective on people’s rights. The public forgets that the judiciary is composed of judges who are “citizens” before anything else.

¹⁰ Statement of the Minister of Justice, Charles Rizk, Hikmeh University, Graduation Ceremony, 09.12.2005.

¹¹ Study carried out by Mohammed Moghrabi, *Annahar*, 19.10.2005, p.19, see also the notes of the writer about the “Reform of the Judicial Inspection Board”, 10.08.2005, p.19.



The Higher Judicial Council is required to offer support and comprehension to the judges who are seeking to achieve real justice and establish a state protects the rights of its citizens. The civil society is required to monitor, comment on and discuss their bold judgments and measure them according to the interpretative judgments of the courts of other developed countries on the subject of human rights, within the framework of what is known today as the globalization of rights. However, the fact is that the publication of court judgments and perusal thereof by the public was insufficient. The same applies to the comment of lawmen on the said judgments which remained limited to individuals to whom justice was done or compensation was paid but were not circulated in an amount sufficient to achieve the purpose of the judgments, namely to deter violators and give reassurance to citizens and acquire their required confidence in the judiciary.

- c- Building a law culture based on court judgments: almost all people believe that the rule law is rigid and inhumane. People should be informed of their rights not only through laws, but also through bold advanced court judgments that adapt to the legal text and take into consideration the factual circumstances surrounding the lawsuit, in addition to drawing the attention to the fact that the judge also rules according to the principles of justice and fairness.
- d- Reference: The research and applied fields in Lebanon and the Arab World lack a legal reference in the civil society for monitoring court judgments. Court bulletins and magazines do not achieve this purpose most of the times, because they content themselves with dividing the court judgments in to chapters in an abstract documentary form, according to an alphabetical or subject index, without reading them from a democratic and human rights perspective and without shedding light on the more advanced judgments in this field or encouraging the discussion of such judgments by society.

We also note the following remarks and first conclusions:

- 1- The problem of university education at the faculties of law: jurists in Lebanon are accustomed to reading a court judgment from a technical perspective, to see if it conforms to a certain provision or takes into account previous interpretative judgments, and not from a legal perspective relating to the spirit of justice and human rights values.



Proper reading that should prevail within the circles of jurists requires a radical amendment to the criticism of court judgments and leaving the typical traditional school of reading court judgments which they have been practicing since being students at the faculties of law.

- 2- Amid the many court judgments rendered, it is difficult for bold judgments to stand out, which makes them isolated and few in number. The matter requires inspection of hundreds of judgments on different issues categories to find bold typical judgments. Court judgments that are bold and of quality at the level of human rights and democracy will always be few in number compared to the large quantity of court judgments in various technical issues, whereas in effect, they are not few. There are few judgments of such type. However, with regard to quality, they are not few.



2

The political, economic and social context

We have divided this first chapter into two sections:

The first relates to the general political and social context in terms of independence of the judiciary and communication with society. The second relates to the personal conditions of the judges.

1- The general political and social context: Independence and communication with society.

The feature of independence from the government distinguishing the judiciary in democracies that enjoy a high degree of stability is the same feature in specifying the civil society. The panel of jurors in criminal cases in certain countries is an expression of forms of interaction and integration between the civil society and judges in democratic societies. Certain citizens are summoned under the system of the criminal panel of jurors to be actual judges in a criminal court. The court comprises the president and two judges forming the judicial panel in addition to two jurors. When the presentation of the case comes to an end, the president of the court asks the jurors questions concerning the facts of the case only. The court bases its judgment on their answers.

Independence from the government is therefore the main feature of the judiciary and civil society organizations. The independence of the political authorities allows the judiciary to better communicate and integrate with society and to regulate its control, protection and maintenance of the social fabric and to peacefully interact with the prevailing values and social change. Were it not for the obligation of total independence of the judiciary vis-à-vis the government and vis-à-vis the different influences and components of society, we could have said that the judiciary is part of civil society since independence and strengthening civil values are the two basic features of civil society.

Civil society is a group of volunteer social organizations with no links to any governmental body: associations, parties, unions, clubs and religious authorities. Civil society also comprises the initiatives of individuals and groups in public affairs. These organizations act as intermediaries between society and the official authorities and perform



the three following tasks: specification of interests, mediation and pressure. The word “civil” implies four main civil or citizenship values:

- 1- Free membership.
- 2- Bylaws based on democracy and mainly the principle of rights and obligations.
- 3- Participation of the members in activities and works of public interest for democracy, development and peace.
- 4- These organizations control and regulate the administration of public affairs through meetings, positions, projects, programs and through the different media and lobby groups.

A double standard is required to be met by the organization to form part of civil society: Independence of the government and working on the development of civil values.

The main aim of a harmonious relationship between the judiciary and society is to change the understanding of law as a tool of repression to a tool of protection. It is a long process starting with faculties of law. They should not be “faculties of law” but “faculties of rights”. The concept of rights takes root through the civil education media and the legal and judicial media.

The relationship between civil society and the judiciary arises, develops and grows from the common belief in the role of the judiciary in strengthening the state that protects its citizens and their rights. The judiciary is the authority that protects rights and freedoms. The judiciary is an authority and the judge alone is equal in importance to a prime minister and the Cabinet with all members thereof, because he rules based on the rule of law¹². However, he cannot act alone. There should be someone to assist him, follow up his actions and protect his independence.

¹² Ghassan Moukhaiber, “Justice, Instrument of Political Power”, *Monde Arabe Maghreb-Machrek*, No.169, July-September 2000, p.80-86.
Sulaiman Takiyyedine, *Justice in Lebanon*, Beirut, Dar Al Jadid, 1996.
The Judiciary in Lebanon, *Abaad Magazine*, June 1996.



In a society where citizens are users and consumers of public services, such services are assessed by citizens based on their quality. Therefore, the need arises for a judiciary that increasingly meets new requirements in its capacity as a distinguished field for democratic life and the practice thereof and that is less subordinate to a class of professionals who rely on the law as a mere justificatory means¹³.

- 2- The personal conditions of the judges:
 - a- The protection of judges: Bold judges in Lebanon are subject to a campaign of moral and physical elimination campaign, as happened on 28.12.2005 for the third consecutive time with Justice Nazem Al-Khoury who is examining the Bank Al Medina file¹⁴, and before him the four judges assassinated on the bench in Sidon without the perpetrators receiving any punishment for their crime. An aspect of the moral elimination campaign is to picture the Lebanese judiciary as “being permanently and totally unable” to confront the crimes and lawsuits presented¹⁵. Another aspect is the failure to take the necessary steps to respect the judiciary and the attempt to replace it with the exceptional international judiciary, although the latter does not constitute a permanent alternative guarantee. Therefore, it is imperative to increase protection for judges and confidence in the local courts.
 - b- The social legislations of judges: There has been talk about decreasing the social allowances of judges instead increasing them, which threatens the independence of the judge in his livelihood and decent living conditions. The independence of the judge is not vis-à-vis the political authority only but is also immunity from need and any form of

¹³ About some of these changes:

Antoine Garapon, “Democracy Tested by the Judiciary”, *Justices*, Dalloz, 1999, p.43-53.

Thomas Clay, “Column Concerning the Judiciary: The fault of the judge”, *Recueil Dalloz*, No. 30, 06.09.2001, 2420-2421.

Yves Benhamon, “Judges leaving the Civil Service to work in the Private Sector: a threat to the impartiality of the State?”, *Recueil Dalloz*, No.30, 06.09.2001, 788-789.

¹⁴ Newspapers published on 29.12.2005, especially *Annahar*, p. 8 and all newspapers. See also, *Annahar*, 30.12.2005, p.8, legal reasons for the judicial meeting chaired by the Minister of Justice as an act of protest, *Annahar*, 31.12.2005, p.7.

¹⁵ 51% of the Lebanese citizens believe that the judiciary is incapable of bringing politicians to trial, *Annahar*, 22.09.2002, p.5.



asking for charity. The employment and pension rights of judges should be preserved and judges should be given compensation and allocations in agreement with their responsibilities.



3

Overview of the issue of reform of the judicial system

The demand for strengthening and reform of the judiciary dates back to the time of independence. It began to grow especially in the 60s which saw a demand for a greater independence of the judiciary authority and less interference in its affairs and more intervention of the judiciary in the cases of constitutional legislation (control over the constitutionality of laws), political accountability (trial of presidents and ministers), protection of media freedoms (provisional detention of journalists and suspending newspapers from publication) and cancellation of military courts.... The said demand for reform was later one of the main points of the Taif Agreement (Other Reforms 3-Paragraph B) which provides for the formation of the Higher Council for the Trial of Presidents and Ministers and the creation of a Constitutional Council to interpret the constitution, observe the constitutionality of laws and to settle disputes and challenges emanating from presidential and parliamentary elections.

Although the two above institutions were established, neither fulfilled its purpose. The Higher Council did not meet to hear any case that should have been referred to it and did not issue any decision. The Constitutional Council did issue resolutions regarded as constitutional interpretative judgments and never seen before by the Lebanese jurisprudence¹⁶, but had a bad experience with regard to a number of other cases, like giving the political authorities “constitutional” ways out to pass unfair electoral laws “for one exceptional time”, making a decision in the Metn by-elections of 2000 to announce a winner who received a number votes way less than those of the main competing candidates who received the highest number of votes, down to preventing the Constitutional Council from meeting in 2005, which led to the impossibility of looking into the challenges to the election results in the said year.

Judicial reform is still the subject of constant debate. Judicial reform may be summarized in five general aspects unanimously agreed upon by the persons concerned with the judicial reform policy:

¹⁶ Such as the priority of the Universal Declaration of Human Rights in the preamble of the constitution which has a constitutional value equal to the remaining provisions of the constitution, the necessary of giving “the same ballot value” to the vote cast by electors in all constituencies.



- 1- Curbing the interference of politicians in the judiciary: The main and oldest problem faced by the judiciary in Lebanon is the interference of politicians in its work. Other problems branch off of this problem. Such interference is neither concealed nor deduced, but is explicitly made known in the media and by officials, even through official statements issued by the different ministers. For example, an official statement by the Ministry of Interior in the 2000 Metn by-elections of read as follows: “A shameful interference by the Prime Minister and Minister of Justice who have no legal right to contact the judge who chairs the registration committee or to make him act in favor of a particular candidate (...). Unfortunately, all this took place during the night after 12 p.m. Sunday.¹⁷

Although writing about political interference in the work of the judiciary will not provide anything new, given the many studies and newspaper reports on the subject¹⁸, we would like to note that the main aspect of political interference consists in entrusting the political authorities with carrying out judicial appointments and reshuffles, which allows the political authorities to interfere in the work of the judiciary contrary to the principle of separation of powers¹⁹. Without going into the details of such interference, we mention, as proof thereof, a circular issued by the Judicial Inspection Board requesting “certain judges” who make contact with political figures concerning judicial reshuffles, to avoid making such contact.²⁰

The resignation letter of Justice Osama Al-Ajouz after 25 years of service read as follows: “When I embarked on my judicial career, I was told that sufficiency, knowledge and hard work were the only criteria that count in appraising a judge, his ranking and promotion. However, the truth and the facts I have experienced were those of a different world. During the period of my service, I found, especially through the

¹⁷ Statement of the Ministry of Interior, newspapers on 07.06.2002. *Annahar* headline on that day: “The Minister of Interior accuses Hariri of interfering with the Judiciary to change the results”.

¹⁸ *Annahar* headline on that day: “The Minister of Interior accuses Hariri of interfering with the Judiciary to change the results. See for example the report of Toni Abi Najem, *Annahar*, 29.05.2004, p.13.

¹⁹ The decree of reshuffles and appointments to judicial posts is signed by the President of the Republic, the Prime Minister, the Minister of Justice and the Minister of Defense.

²⁰ Circular published in *Annahar*, 11.12.2005, p.5.



judicial reshuffles I witnessed, that the other considerations that prevail in this country and are clear to everyone, are those that always and mainly take precedence over the objective criteria. There are no indications that matters will change in the near or remote future and the contrary may be true (...). The resigning judge concluded by requesting the “President of the Higher Judicial Council to “refer the resignation letter to the competent authorities to carry out the necessary legal measures”.²¹

The proposed solutions to the independence of the judiciary include the reexamination of the formation of the judicial authority to give it more independence vis-à-vis the executive, pursuant to the principle of separation of powers provided for in the preamble of the Lebanese Constitution and Article 66 of the constitution²². Judges are appointed to higher posts either by virtue of ordinary decrees or decrees passed at a meeting of the Cabinet, on the proposal of the Minister of Justice or the Prime Minister, meaning the political authority, without the competent judicial authority, such as the Higher Judicial Council, having any opinion on the subject. The said positions include those of the Senior President of the Court of Cassation which undertakes at the same time the presidency of the Higher Judicial Council, the State Prosecutor, the President and members of the Judicial Inspection Board, the non-elected members of the Higher Judicial Council with regard to judicial courts, the presidents of the chambers of the Court of Cassation, the President of the State Consultative Council and the Government’s Delegate with the Council and the presidents of the chambers, meaning the members of the Council’s Board, with regard to administrative courts, the Head of the State Audit Bureau and the Public Prosecutor with the Bureau and the presidents of the chambers with regard to the State Audit Bureau.

The judicial appointments are considered the main crossing for interference of the executive in the work of the judiciary for it constitutes-according to the testimony of a senior judge who became Minister of Justice-an efficient tool for putting pressure on courts and judges. The said tool is used to eliminate any persons from positions or

²¹ Resignation letter published in *Annahar* on 13.05.1998.

²² A number of legal studies mention that the judicial authority disposes of a large margin for maneuver away from the interference of the executive. For example, the study of the judiciary’s independence of the powers of the Minister of Justice, Advocate Elias Bou Eid, *Addiyar*, 27.07.2005, p.9.



lawsuits whose presence is not desired and to appoint others whom the executive deems are appropriate.²³

Likewise, the budget of the judiciary is not independent but is annexed to the budgets of the Ministry of Justice and the Premiership.

A number of deputies and legal activists presented proposals for reconsideration of the formation of the judicial authority and the amendment of its legislations in such manner as to conform to the principles of independence of the judiciary and separation of powers and for strengthening the independence of the judge. They included: former Speaker Hussain Al-Hussainy²⁴, MP Boutros Harb²⁵, former minister and judge Joseph Shaoul, former MP Dr. Issam Nooman²⁶, ...in addition to studies about the obstacles faced by the judicial authority, carried out by Dr. Issam Nooman²⁷, MP Ghassan Mokhaiber²⁸, Advocate Sulaiman Takiyeddine²⁹ and Advocate Mohammed Moghrabi³⁰.

One of the proposed ideas is to establish an independent higher judicial board parallel to the executive and the judiciary, entrusted with appointment, reshuffle, delegation, promotion, ranking, discipline, salaries, compensation, dismissal, compulsory retirement, specification of the number of chambers and distribution of tasks, provided that the said board is a legal independent person, financially and administratively. This supposes giving public prosecutions the right to violate the content of the orders of pursuit or to stop the pursuit authorized by the Minister of Justice after giving the reasons for such

²³ Justice Dr. Khaled Kabbani, "Legal Reform and the Judicial System", Bulletin of the Association of Lebanese Banks, June 2004, p.63.

²⁴ Proposal of Speaker Hussain Al-Hussainy, *Annahar*, 19.03.1997, p.8.

²⁵ Proposal of MP Boutros Harb, *Annahar*, 21.03.1997, p.4.

²⁶ Issam Nooman, "Law Proposal for Regulation of the Judicial Authority", *Annahar*, 03.10.1995, p.6.

²⁷ Issam Nooman, "Lebanese Judiciary: Post to authority", *Annahar*.

²⁸ MP Ghassan Mokhaiber, *Annahar*, 06.02.2004.

²⁹ Sulaiman Takiyeddine, "Proposed ideas for achieving an independent judicial authority", *Annahar*, 07.09.1999, p.15, "Independence of the judiciary in its functional and vital dimensions", *Annahar*, 09.06.1999, "Independence of the Judiciary: Influence of the legislative", *Annahar*, 10.06.1999, "Status of the judiciary in Lebanon and obstacles to the independence thereof", *Annahar*, 29.04.1997, p.15.

³⁰ *Annahar*, 10 and 13.10.1998.



refusal, and canceling the right of the said minister to the reshuffles, attachments and delegations and restricting the said power to the independent board, in addition to setting forth a provision that considers interference in the judiciary as a penal crime punishable by imprisonment.

- 2- Strengthening the role of the Higher Judicial Council: the membership of five non-permanent members of the Higher Judicial Council who make up half of the board has expired since November 11, 2005. Such paralyzed Higher Judicial Council is a grave precedent never seen before within the judiciary, despite all the difficulties faced by Lebanon for more than three decades. The Council continued to perform its duties and exercise its powers³¹.

Paralyzing the Higher Judicial Council resulted in the obstruction of the purification of the judicial corps and the performance of judicial appointments required by the issue of the decree of appointment of 28 judges to the cadre of courts of justice who have been waiting to take up their posts for months, in addition to the need to fill seats that have become vacant after making a number of judges take compulsory retirement, to open a new session for judges graduating from judicial studies institutes and to appoint a judicial investigator to look into the assassination of Journalist and MP Gebran Tueini.³²

Paralyzing the Higher Judicial Council called for the intervention of the Parliament on 30.01.2006 which approved a law proposal to fill the vacant seats and oblige the President of the Republic to make a decision thereon within a period of five days.³³ The President returned the law proposal. The proposal gives the five current members, three of whom are de facto members, meaning the President of the Council and his Deputy, the State Prosecutor and the President of the Judicial Inspection Board, and two of whom are elected by courts of cassation, the right to choose the other members at a session called by the President of the Council. In the past, the Minister of Justice would chose the five names in agreement with the President of the Republic and the Prime Minister then issue the appointment decree signed by the

³¹ *Annahar*, 27.01.2006, p.5, 6 and 7, 28.01.2006.

³² *Annahar*, 21.01.2006, p.8.

³³ *Annahar*, 31.01.2006, p.4



three of them³⁴. Despite criticisms to the said proposal, especially in terms of saying that “an incomplete body composed of five members cannot be authorized to meet and elect”³⁵, and authorizing judges to appoint their colleagues is” a serious precedent”³⁶, the proposal is considered a bold step toward disengagement between the political authority and the judicial authority and toward giving independence incentives to the judicial authority.

In addition to the foregoing, the Higher Council for the Trial of Presidents and Ministers was paralyzed. The power of the Higher Council cannot be enforced as mentioned in the aforementioned study by MP Ghassan Mokhaiber.

- 3- Strengthening the role of the Constitutional Council: five members of the Constitutional Council, including the President and the Deputy President, are suspended since August 8, 2005³⁷. For this reason, the Constitutional Council is not performing any of its duties, including the observance of the constitutionality of laws and examination of the pending electoral challenges since the parliamentary elections in 2005³⁸. In another development related to the Constitutional Council, the President of the Republic returned the law proposal of amendment of the Constitutional Council Law, drafted by MPs Bahij Tabbara and Boutros Harb, and aiming at “expanding the base of the persons from among whom members can be selected, by opening the door again for working judges instead of limiting selection to retired judges, and opening the door for appointment to candidates other than judges and lawyers” according to particular conditions.
- 4- Settling cases and increasing the number of judges: the Lebanese courts are suffering the accumulation of judicial files, both cases and revisions³⁹. A statistic mentioned that there are “216 files per judge

³⁴ Newspapers published on 31.01.2006.

³⁵ MP Mikhail Al-Daher, interview with the Lebanese Broadcasting Corporation, 30.01.2006, evening news bulletin.

³⁶ Ali Al-Mousawi and Ahmed Al-Zain, Investigation in *Assafir*, 02.02.2006, p.5.

³⁷ Despite the denial of the Constitutional Council that “all members have abstained from performing their duties”, in a response to a study by the legal expert Hassan Al-Rifaii, *Annahar*, 07.01.2006.

³⁸ *Annahar*, 20.01.2006, p.6.

³⁹ Statistic of the International Agency for Information, *Annahar*, 22.09.2002, p.5.



every six months”(!)⁴⁰, despite a marked increase in the rate of settlement of cases⁴¹. Other recent statistics⁴² indicated that the number of revisions that have been pending for years before the State Consultative Council alone (the judicial body that looks into administrative matters in Lebanon) are estimated at 3,000 revisions relating to the affairs of citizens, whereas the Council receives 1,000 revisions every year and decides upon the same number of revisions in a single year. The Minister of Justice indicated that there was a plan to increase the number of final decisions upon revisions from 1,000 to 2,000.

The accumulation of files also applies to the courts of justice⁴³, where there is ample need for an increase in the number of judges, the establishment of additional chambers, a new distribution of tasks and the building of new vast locations.

- 5- Executing court judgments: the Lebanese administration often refuses to execute court rulings or enjoys a vast and unjustified assessment authority in the execution thereof, especially the resolutions passed by the Consultative Council for annulment or stay of execution of administration resolutions. For example, the political authorities have unrightfully put a number of director generals at the disposal of the Prime Minister, despite their recourse to court. Another example is that the administration has failed to execute the resolutions of the Consultative Council in financial matters and equivalent: (for example, the collection of the relative financial stamp in compensation for the lump fee on contracts...)⁴⁴.

The discussion about democracy and democratic transformation in Arab dictatorial regimes or threatened democracies, like Lebanon, cannot mask or marginalize the status and duties of the judge in his capacity as a fundamental element that guarantees and protects basic freedoms. Within the context of the current development of the task of

⁴⁰ *Annahar*, 30.04.2002, p.7.

⁴¹ *Annahar*, 04.07.2002, p.15.

⁴² Information leaked from the meeting of the Minister of Justice with the members of the Consultative Council Bureau, *Annahar*, 21.12.2005, p.4.

⁴³ One of the detainees in the Donnieh case asked: “Are you going to wait for 10 years before completing the interrogation?”, *Annahar*, 19.03.2005, p.7.

⁴⁴ A study by Dr. Rami Baroud: “The administration is not bound to execute court judgments in “Banana republics” only!”, *Annahar*, 05.07.2004, p.8.



the judge in the Arab World, and in view of the globalization of rights, there are two proposals for the future that take precedence: Rehabilitation by judges of the principle of the rule of law and preservation of the social bond in the face of the individualist tendency of rights and exaggeration of litigation.

In Lebanon, the history of judges is rich in concern with independence in response to the gradual weakening thereof by a political authority subject to foreign orders and tutelage. But the memory of judges in Lebanon and other Arab countries and testimonies of their lives until recently are relatively rare and distributed in dispersed writings and periodicals. Research in this field allows the extraction of the lived aspects of the profession, which can be used as a beneficial tool for judges' education institutes.

The discussion about distinction between what is temporal and religious in the Arab World often drowns the real discussion consisting in the rule of law and its practical historical formation, global feature and comprehensiveness. Legal advices can be a valuable source of legislation, but cannot be a procedural source. A court judgment in Egypt mentioned that Islam is a source or a main source of legislation, but is not legislation.

The Arab and Lebanese judges may conform, and promote the rule of law in different circumstances. On the other hand, the traditions shared by the different sects in the Arab World, especially the experiment of the justice of peace and judicial mediation can help, within the conditions of updating thereof, reconcile the rights of individuals and the rights of groups, in such manner as to protect the social bond threatened by recent deviations toward individualism and exaggeration of litigation.

See also a study by Issam Niima Ismail entitled: “How can the administration be bound to execute the rulings of the Consultative Council”, *Annahar*, p. 8.

About the refusal by a conservative to execute a Consultative Council resolution providing for the suspension of the license of a plant”, *Annahar*, “Environment and Heritage” page, 15.02.1999.



The major problem in the Arab legal culture lies in the change from the traditional Arab judge to a judge who is the guardian of justice and in laying down the positive rule of law, preserving at the same time the positive aspects of the Arab legislative heritage consisting in the guarantee of the social bond threatened today as a result of individualist deviations or in the use of “my tool” of the law, in the manner of law-administration.



Appendix

Sample of pioneering court judgments in Lebanon⁴⁵

- I- Public freedoms, basic rights and independence of the judiciary:
- President Michel Abou Arraj and Justices Hareth Elias and Ghada Abou Karroum.
- 1- The ruling of the Criminal Law of Beirut closing the file of General Michel Aoun on his speech before the Congress (Felonies, Beirut, 05.07.2005, *Annahar*, 06.07.2005).
- Hani Habel, The Single Judge of the Penal Court of Beirut.
- 2- The judgment rendered in the events of August 9, 2004: The opinions of the opposition do not constitute a breach in a democratic country. The annulment of the preliminary procedure and investigations carried out by military investigators in ordinary crimes does not fall within the jurisdiction of military courts (10.02.2004, *Annahar*, 11.02.2004), and the comment of Dr. Douraid Bsherrawi, *Annahar*, 23.02.2004.
- President Ghaleb Ghanem and Justices Daher Ghandour and Carmen Atallah Badawi.
- 3- The ruling of the State Consultative Council annulling the communiqué the Ministry of Interior to preserve the freedom of associations and prevent abuse of power (Chamber I, No. 135/2003-2004, on 18.11.2003, *Annahar*, 23.12.2003), and the comment of Advocate Tawfic Rahid Al-Hindi, *Annahar*, 04.02.2004.
- Presidents Jamil Bairam and Justices Ghada Aoun and Imad Kabalan.
- 4- The ruling of the indictment panel in the complaint lodged by President Amin Gemayel against the former minister Karim Pakradouni, referring the latter to the court of publications for the offense of lashing

⁴⁵ According to Antoine Msarra and Paul Morkos, "Observatory of the Judiciary in Lebanon": defense of justice, fairness and freedoms in Lebanon (selected forms of court judgments), Beirut, Lebanese Institution for Permanent Civil Peace, in cooperation with the Middle-Eastern American partnership initiative, Oriental Library, 2006, p.168.



out at Gemayel, contrary to the ruling of the investigation judge prohibiting the trial (*Annahar*, 29.07.2005).

President Fadi Elias and Justices Zeina Boutros and Roua Hamdan

- 5- The ruling of the Court of First Instance in Beirut: Annulment of the legitimacy of the leadership of the Phalange Party (*Annahar*, 22.07.2005).
 - 6- The ruling of the indictment panel in Beirut changing the legal description in the case against *Addiyar* newspaper from felony to misdemeanor in the public right case against it for the offense of slander and libel and insult to the dignity of the President of the Republic (on 20.05.2005, *Annahar*, 21.05.2005).
 - 7- The ruling demanding imprisonment for a detainee on the charge of threatening a judge who passed a bold judgment in a case against the regime (*Annahar*, 29.10.2005).
 - 8- The resolution of the Constitutional Council annulling the law of deferral of the hearing of the parliamentary challenges because it violated the provisions of the constitution (Resolution 1/2005 on 06.08.2005).
 - 9- The resolution of Constitutional Council annulling unconstitutional articles in the phone calls secrecy law to preserve freedoms (Resolution 2/99 on 24.11.1999).
 - 10- The Constitutional Council resolution annulling the law of prolongation of the mandate of mayors and mayoral councils (Resolution 2/1997, on 12.09.1997).
- II- Personal freedom, defense rights, proof of innocence, rights of the prisoners and torture resistance:

The State Lawyer with the Court of Appeal in Mount Lebanon, Judge Maher Shiito.



11- The ruling arresting the officer in charge of the Office for Combating International Theft Crimes with the Internal Security Forces because he arrested a citizen without a court order (*Annahar*, 11.06.2005).

12- The case of trial of an officer for the crime of causing the death of a citizen under torture during the investigation (*Annahar*, 02.03.2005).

President Ralf Riachi and Justices Ghassan Fawwar and Malek Soaibi.

13- The ruling of the Penal Court of Cassation: reading out of the indictment clearly and explicitly before the Criminal court is an essential rule relating to the right of defense. The disregarding of the said rule leads to the nullity of the ruling of the court (Penal cassation, Chamber 6, Ruling 344/2004, on 30.12.2004).

President Joseph Ghamroun and Justices Khaled Hammoud and Ahmed Hamdan.

14- The ruling of the Criminal Court of Mount Lebanon: Condemnation of the provisional detention and announcement of the acquittal of the accused detained for a long period without proof (No.90/2002).

President Joseph Ghamroun and Justices Ahmed Hamdan and Sami Sodki.

15- The ruling of the Criminal Court of Mount Lebanon: Condemnation of the preliminary investigation and disregard of the confession under duress (Ruling 472/98, on 14.05.1998).

President Ahmed Al-Moallem and Justices Nohad Mortada and Elias Nammour.

16- The ruling of the Penal Court of Cassation annulling the minutes of the preliminary investigation in implementation of the right of defense (*Annahar*, 04.03.1998).

President Joseph Ghamroun and Justices Khaled Hammoud and Ahmed Hamdan.

17- The ruling of the Criminal Court of Mount Lebanon in the case of killing of an inmate by a prisoner: this case should be put on the table



of the legislator who is researching the improvement the prison conditions (Ruling 790/2000 on 21.12.2000).

- III- Annulment of the resolutions of the administrative authority and acknowledgment of the principle of taking legal action against the state concerning liability for the actions of judges and the principle of recovery of the rulings of the Court of Cassation.
- 18- The resolution of the State Consultative Council annulling the decree of dismissal of the Head of the Educational Center for Research and Development because he did not observe the right of defense and the right of perusal (*Annahar*, 24.06.2005).
- 19- Recovery of judgments (comment by Dr. Fadi Nammour, *Al Adl*, 1, 2002).
- 20- The ruling of the Court of Cassation for taking legal action against the State concerning the liability for the actions of judges in the event of gross error (Ruling 16/1, on 29.06.2001, *Al Adl*, 2001, with the comment of Advocate Elias Caspar).
- 21- The resolution of the State Consultative Council concerning the hearing the demand of retrial because the “stereotyping and strict abidance by provisions” were breached: not mentioning the phrase “in the name of the Lebanese people” in the judgment does not annul the judgment (Ruling 779/2003-2004, on 14.07.2005, *Al Adl*, 2, 2005).
- IV- Private freedoms, freedom of belief, resistance to violence against women and children, equality without racial or ethnic discrimination.

President Labib Zouein and Justices Alice Shabtini and Elias Nayfe.

- 22- The ruling of the Penal Court of Cassation imprisoning a person accused of killing his brother “to wash the disgrace” because the motive was personal and dishonest (*Annahar*, 24.12.2003).

President Mouhib Meemari and Justices Yahia Mawlawi and Jean Eid.

- 23- The ruling of the Civil Court of Cassation: the freedom to change one’s religion is included in the freedom of belief stipulated in the



constitution and is a human right (Chamber 5, Ruling 26/2001, on 13.03.2001).

President Ralf Riachi.

- 24- The ruling of the Penal Court of Cassation: incrimination of the accused of a female child abuse and compensation for the moral damage suffered by her father (Chamber 6, Ruling 29/2001, on 30.01.2001).

President Ahmed Allam and Justices Nohad Mortada and Elias Nammour.

- 25- The ruling of the Penal Court of Cassation: A Sri Lankan or Filipino maid is equal to dignity and respect due to all humans, however high their social, political or financial status (Chamber 7, Ruling 1/98, on 06.01.1998).

- V- Overstepping the implied immunity and actual protections of categories of people and disregarding the “stereotyping” of court judgments and “strict abidance by the provisions” of the law to protect rights.

- 26- The ruling of the indictment panel in Beirut canceling the ruling of the investigation judge who prohibited the trial of the doctors who caused the death of a citizen (*Annahar*, 14.07.2005).

Nassib Elia, the Single Judge of the Penal Court in Jounieh.

- 27- Acquittal of the driver of car that run over a citizen who crossed the highway without paying any attention and killed him (21.10.1997).



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