



The Outline of the State of the Judiciary Report for Lebanon

**EDITED AND PUBLISHED BY
THE ARAB CENTER FOR THE RULE OF LAW AND INTEGRITY
(ACRLI)
THE INTERNATIONAL FOUNDATION FOR ELECTION SYSTEMS
(IFES)**

January ٢٠١٤

Part I: Historical, Political, Sociological, and Economic Background. Methodology.

Modern Lebanon emerged as a State in ١٩٢٠ during the French mandate. The confessional system was rooted in the Lebanese society, and the mandate did not affect the rights given to all religious communities whose powers were expanded by given them the right to legislate, and to institute their own courts which were independent from the Lebanese constitutional authorities, and from statutes.

Lebanon adopts the private-sector economic system. At the end of a ١٥-year tribulation, Lebanon had to face the challenge of reconstruction and join international development, a fact which had necessitated modernization of laws and the judiciary system.

Part II: The Legal Foundation of the Present Judicial System:

a- Legal Texts and International Agreements Governing the Lebanese Judiciary:

- **The Lebanese Legal Texts:**

The Constitution has vested the judicial power in such various courts as may the law determine. There are seven branches of the judicial power, for each of which a special law was provided.

- **The International Conventions Adopted by Lebanon:**

The judiciary was influenced by the international conventions that Lebanon has ratified, and especially the Universal Declaration of Human Rights, the Basic Principles on the Independence of the Judiciary, the International Covenant on Civil and Political Rights, and the Association Agreement between the European Union and Lebanon.

b-The Main Particularities of the Lebanese Judiciary:

There are seven branches of the Lebanese Judiciary: The constitutional, political, judicial, administrative, financial, military, special judiciary.

Part III: Analysis of the Judiciary Status in Light of the Ten Principles of Impartiality:

Ten principles have been maintained for the Arab States first year report as follows:

١. The Guarantee of Judicial Independence
٢. Institutional and Personal/Decisional Independence of the Judges
٣. Adequate Training and Continuing Legal Education
٤. Adequate Qualifications and Objectives and Transparent Selection Process
٥. Income and Asset Disclosure
٦. Conflict of Interest Rules
٧. The Right to a Fair Trial, Equality Under the Law and Access to Justice
٨. Fair and Effective Enforcement of Judgments
٩. Public Access to Legal and Judicial Information
١٠. Judicial Access to Legal and Judicial Information

The above mentioned principles may be grouped under ٢ main parts: The first relates to the Judiciary system, and the second part to the rights of judges.

A. The Principles Governing the Independence of the Judiciary

١. The Guarantee of the Independence of the Judicial

The Lebanese Constitution and the laws regulating the judicial power have guaranteed the independence of the judiciary as an institution.

١-١-Texts Limiting the Independence of the Judiciary

The laws regulating the judiciary have limited the principle of independence of judiciary, especially by consecrating the executive power to interfere in the judicial power's activities.

١-٢-Types of special courts

The different type of special courts contravenes the general principles of independence of the judiciary, be it with regard to the establishment of these courts or to their competences or to the official or presidential authorities to which they must report. These courts are the following:

- i. The Sunnite and Shiite Religious Court, and the Druze Confessional Court
- ii. The Christian Religious or Spiritual Courts, and the Israeli Community
- iii. The Arbitration Labor Relations Board
- iv. The Permanent Military Court, and the Military Court of Appeals
- v. Expropriation Commissions
- vi. The Judicial Council
- vii. The Council of State
- viii. The Supreme Judicial Council

B. The Principles Governing the Judge's Personal Rights

٢. Institutional and Personal/Decisional Independence of the Judges:

The infringement of both the executive and legislative powers upon the judge's personal independence is particularly manifested in the appointment of the judges to higher offices. For the law entrusted these powers with such an authority over appointing the judges, as to place the appointed judges under their control.

The Council of State, as a higher administrative court, is not immune to the administrative power, especially that the judges who have been

delegated by the Council to sit as legal advisors in the presidency of the Council of Ministers according to Article ٥٩ of the Status of the Council, remain as members in one of the Council's chambers, which considers the question falling within its competence. This actually, casts doubt on the capacity of these members to honor the principle of separation of powers, and to escape from the shadow of the tasks to which they have been commissioned outside the Council.

Also, the religious courts' judges are not appointed by the Lebanese authorities but by their special religious references, and they are not subject to the State's authority or control. Most of the time, these judges do not have the educational competence to fulfill their responsibilities because they do not hold a law degree.

Finally, the executive power is entrusted with the authority to commit, before the Judicial Council, at its own discretion, such cases as it may determine.

٣. Adequate Training and Continuing Legal Education:

The training of judges is principally done, in Lebanon as in all countries adopting the French system, in a judiciary institute. To be eligible for admission to the Institute for Judiciary Studies, an applicant must, among other requirements, pass the Institute entrance examination, and hold a Lebanese Bachelor of Laws degree. The Institute operates on a ٣-year program of study.

٤. Adequate Qualifications and Objectives and Transparent Selection Process:

The authority entrusted with power of appointing judges differs according to the judicial branch to which the judges are attached.

٤-١-Regarding the Judicial Judiciary:

The Supreme Judicial Council and the Minister of Justice participate in appointing the apprentice judges, and in the transfer, delegation, and attachment of judges. In case of disagreement between the Supreme Council and the Minister of Justice, the issue will be referred to the Council of Ministers for settlement.

٤-٢-Regarding the Administrative Judiciary:

It follows the same procedures mentioned under ٤,١. in addition, special courts are established by decrees issued by the government, and whose judges are appointed by decisions taken by the Minister of Justice.

٤-٣- Transfer, Promotion, and End of Service:

Lebanon underlines the principle of immovability of judges, and has defined as well the objective deciding factors of qualification, impartiality, and experience, as bases for the promotion of judges. Transfer of judges and their individual or collective attachments, or appointment of delegations, are made by a decree at the approval of the Supreme Judiciary Council and the Minister of Justice. Higher positions in the Judiciary are still subject to community quotas to the detriment of qualification or experience.

٥. Income and Asset Disclosure:

Although the judge's basic monthly salary is relatively modest in comparison to the current high living expenses in Lebanon, other elements are added in as to make it relatively high allowing thus the judge financial stability.

The Law of Unjust Enrichment requires that judges of the third degree or its equivalent and higher, submit at the beginning of their duties a declaration signed by them in which they list all their personal properties and estates. There are no laws which require periodic disclosure, though.

٦. Conflict of Interest Rules:

Article ٤٧ of Decree-Law N°١٥٠/٨٣ Regulating the Judicial Judiciary prohibits the judge from combining judiciary services with public services, or with any other profession or remunerated job whatsoever. Judges are entitled, however, to teaching in universities and higher educational institutes.

C- Equity, and Protection of Rights

٧. The Right to a Fair Trial, Equality Under the Law and Access to Justice:

The principles that govern equity and protection of rights are four:

- Transparency of the Judiciary.
- Appealability of decisions.
- Accountability for judicial acts.
- Administrative control and scrutiny of judges' acts.
- Assuring resort to the judiciary.

Λ. Fair and Effective Enforcement of Judgments

Λ-١. Execution of Judicial Judgments:

Article ٤٢٩ of the Lebanese Criminal Law considers that he who asserts his rights by himself where he could refer to the competent authority for that effect, by dispossessing others or damaging properties by having recourse to violence of use, shall be liable to a fine not exceeding the ٢٠٠ thousand Lebanese pounds.

Λ-٢. Procedure of Executing Civil Judgments:

The execution of the civil judgments as well as the judgments issued by the religious and spiritual courts is carried out by the Execution Department attached to civil courts.

Λ-٣. Procedure of Executing Criminal Judgments:

The imprisonment penalty is executed through the general prosecutors. The application of capital punishment in Lebanon has attracted widespread criticism from various states and international organizations, in spite of the fact that it is a clear violation of human rights, and of the European Association Agreement which Lebanon has ratified..

Λ-٤. Execution of Foreign Judgments:

The executable form is granted to foreign judgments provided the following conditions are met:

- The foreign judgment must have been issued by competent judges according to the law of the country where the judgment had been issued, provided that their jurisdiction be not established only in relation to the petitioner's citizenship.
- The foreign judgment must have been final (*res judicata*), and be executable in the state in which it had been issued; nevertheless, executable form may be granted to the provisional judgments that had been executable in the state concerned.
- Defendants must have been informed of the case that had reached judgment, and their rights of defense guaranteed.
- The judgment must have been issued in the name of a state whose laws allow execution of Lebanese judgments on its territories, upon having been given careful examination, and executable form.

- The judgment must have not included anything that may contravene the public order, whatsoever.

٨-٥. The State of Prisons and Detention Centers in Lebanon:

١. Organization of Prisons:

Decree N° ١٤٣١٠/N dated February ١١th, ١٩٤٩, classified prisons and their administration into central and departmental prisons, yet not taking into consideration as a criterion for this classification the extent to which the personality of the convicted or the detainees criminals is dangerous, criminal background, and the extent to which the circumstances surrounding the commission of crime are dangerous.

٢. The Rights of the Detainees Placed Under Provisional Detention:

They are manifested in the right to communication, and the rights of defense.

D- Principles Governing Publication of Legal and Judicial Information:

٩. Public Access to Legal and Judicial Information:

Laws and decrees issued by various authorities in Lebanon are published in the Official Journal. This Journal, however, is not sold to wide public or distributed to private institutions. The Journal is not computerized; it comes out in paperback, only.

١٠. Judicial Access to Legal and Judicial Information:

What we have just mentioned above applies also to judges; for the only means available for them are, in view of the lack of computerization, the Official Journal, legal encyclopedia in paperback, and published judicial opinions in legal journals.

Part IV: A Broad Analysis of the Major Attacks on J.I.P :

The Way Lebanese Judiciary Handles Public Liberties.

On September ٩th, ٢٠٠٢, the Chamber Dealing with Printed Materials of the Court of Appeals in Beirut, issued a decision, taken by a majority, ordering the complete incapacitation and shutdown of MTV and radio Mount Lebanon, pursuant to Article ٦٨ of Law N° ١٧١ dated January ١st, ٢٠٠٢ (Law Pertaining to Election of Representatives) for practicing electoral advertising during the partial parliamentary elections held in the Northern Metn, with a view to tip the elections scales in the two mass media main shareholder's favor (Gabriel Murr).

Part V: Main Proposals for Solutions, and Plans for Development:

We have lately been witnessing increasing talks about the necessity of amending the laws regulating the judiciary in Lebanon. These talks have been incorporated in various projects suggested by eminent lawyers and politicians. These projects aim to divest of their power the Minister of Justice, and the Council of Ministers, vis-à-vis the judicial power.