



The Report of State of the Judiciary in Lebanon

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Part one: Sociological and Historical Preamble:

Modern Lebanon emerged as a State in the year 1920, in the aftermath of a coalescence of the Mount Lebanon Province (mutasarrifiat) with the departments that have been detached from the Beirut and Damascus ex-Ottoman Districts (wilayat).

At the sociological level, Lebanon is composed of a large number of religious communities, since there is no Lebanese citizen who does not belong to one or another community. The mentioned communities are divided into two main groups: the Christian community with its 18 rites and the Muslim one encompassing 4 rites.

The origin of these communities goes back to ancient times. When Islam reached Damascus, the different Christian rites were already in existence due to the schism that had occurred within Christianity. Immediately after the Arab conquest, Islam admitted the existence of these communities that later became – in addition to Judaism – officially recognized communities.

In 1516, and one year after the Ottoman Sultan Salim the Second has laid hold of Damascus and Egypt, all the Christian communities, with their different rites, became submitted to the Ottoman State authority.

The Christian communities and rites have remained unchanged under the Ottoman reign and after its collapse at the end of the First World War in 1918. As a result of this disintegration, many states, including Lebanon, have emerged in the Arab World. However, the main event in the Lebanese evolution was the transformation of the Muslim groups into autonomous rites, always with the presence of the Christian rites and the Jew community.

Henceforth, the Lebanese population has belonged to different officially recognized communities that have been given -according to Article 9 of the Constitution- the complete right to legislate in the field of personal status, succession, testimony, donation, adoption, etc., which has granted them the right to establish their courts.

These communities were also granted the right to set up their own different spiritual courts. For example, the Islamic courts, though apparently reporting to the presidency of the Council of Ministers, does not effectively enjoy its independence from the Lebanese juridical/judicial system. However, the spiritual courts are totally independent regarding their establishment, organization, and activity, hence, they are not submitted to any state control and all of their judges, as well as activities, management and subordinations are free from any regulations that regular judges abide by.

The Lebanese population sociological status as well as the fact that it belongs to several communities (confessions) has highlighted this particularity and required the existence of various legislative references which are: the legislative power and the different communities which is reflected in the judicial power since the multi-reference legislation necessitates different courts and bodies that are submitted to various independent authorities not originating entirely from State independence and general law.

Since the mid-nineteenth century, the Ottoman state had already adopted new legislations influenced by the French laws. These laws were enforced in all the Sultanate regions, including the Mount Lebanon province. However, a large number of legislations remained submitted to the Sharia or special confessional laws, mainly that of personal status, testimony and succession.

With the birth of modern Lebanon under the French mandate right after the First World War, the mandatory authorities redrafted a law inspired by the French legislation, but left out the personal status laws of this legislative movement and preserved for the confessions the power of establishing their own religious and spiritual courts in order to avoid a social upheaval; thus, any reasons for insurrection were prevented by avoiding the daily Lebanese live laws.

The mandatory authority has set up in Lebanon a parliamentary democratic system, based on free trade. Therefore, the Lebanese legislation and the judicial system were founded on these rules and principles.

Afterwards, the independence era consolidated what was set up by the mandatory authority. Hence, the spirit of the French heritage is still prevailing in most of the laws, mainly those related to the judicial regulations, though some of these are inspired by other European texts or maintained as an inheritance from the oriental communities.

Thus, Lebanon, whose structure is originally complex, became subjected to a multi-trended pluralist system. On one hand, there are the laws inspired by more developed societies and those originating by the State itself, as a result of intellectual effort devoid of any experience or historical development, and without any discussion that preceded or followed Lebanese independence. On the other hand, there are the high laws that the authorities has set and issued was decided by the commissioner, mainly the real estate, obligations and contracts codes and then the laws issued by the Lebanese authorities which are also inspired generally by the European laws, and particularly by the French ones. In addition, there are laws that are inspired and closely related to ancient religious communities.

This pluralism has hindered the establishment of the general system principal and lead to the schism in the judicial concepts.

Lebanon adopts the private-sector economic system, which is based on individual initiatives, and private investments. A flexible economic system catered for the needs of all. Being a service-sector economy due to lack of natural wealth and energy resources, the Lebanese economy rests particularly on tourism and banking sectors.

During the Civil War (1975-1990), the Lebanese economy suffered a major setback following the period of tourism stagnation, and the flight of national and foreign capitals to countries where economic situation is more stable, all leading to the collapse of the national currency in the eighties.

At the end of a 15-year tribulation, Lebanon faced the challenge of reconstruction by enhancing investments and attempting the creation of its role as a regional financial hub. Consequently, issuing new and modern legislations was ineluctable in order to keep up with the development of international trade and open markets.

Among the legislations issued in the 1980s, there was the new code of civil procedures. The code of criminal/penal procedure issued in the late nineties laid the foundation of the principle of innocence of a person until his/her inculcation; it also led to the issue of law no.99/75 related to intellectual property protection in order to keep up with international efforts to fight piracy. Lebanon has also developed its financial legislations, particularly those related to the Beirut stock exchange and the Central Bank, as well as those related to insurance companies and the banking system, in an attempt to offer better protection for investments.

In parallel to legislative development, it is necessary to develop the entire juridical/judicial system as it is the cornerstone in the foundation of modern legislation and it is indispensable for ensuring its efficiency, knowing that this system is going to apply, protect and develop the legislations by jurisprudence and by adjusting them accordingly to the social and economical dimensions. Therefore, the juridical/judicial system has to be efficient, quick, decisive, impartial and trustworthy; consequently, it is important to add to the judges' juristic culture some knowledge about economy, finance and the modern techniques of conflict resolution, such as arbitration with all its aspects. It is also important to educate judges about the international and multi-resource contractual and different legal types of conflict resolution.

Therefore, the general principles of the Judiciary, as one of the State's systems, will be clarified. An overview of the types of Lebanese juridical/judicial commissions will then be presented, followed by an examination of the independence of the Lebanese juridical/judicial system, which is theoretically reinforced in the constitutional and general law texts. Finally, the refutation (abrogation) of this principle in the legal texts will be examined, as well as the elaboration of the exceptional judiciary.

Part Two: The Legal Foundation of the Current Judicial System:

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

- **The Lebanese Legal Texts:**

- Article 20 of the Constitution states as follows:

The judicial power shall be vested in such various courts, at all degrees and jurisdictions, within a framework as may the law establish in pursuance of which necessary guarantees are granted to judges and litigants.

The judicial guarantee, and its limitations, shall be placed under such conditions as the law shall determine. In all cases referred to them for adjudication, the judges, both of the supreme and inferior courts, shall act independently in arriving at deciding cases, and shall pronounce judgments and decisions in the name of the Lebanese people.

- Article 80 of the Constitution providing for the establishment of the Higher Council for the prosecution of presidents and ministers.
Also, the Law N° 13 of August 8th, 1998, related to the procedures followed before the Higher Council.
- Article 19 of the Constitution providing for the establishment of the Constitutional Council.
- Law N° 250 of July 7th, 1993, establishing the Constitutional Council, and Law N° 516 of June 6th, 1996, in pursuance of which the Bylaws of the Constitutional Council were issued.
- Decree-Law N° 150 of September 16th, 1983, amended by Decree-Law N° 22 of March 3rd, 1985, related to the Judicial Judiciary Law.
- Decree N° 10434 of June 14th, 1975, related to the Council of State Regulations.
- Decree-Law N° 82 issued on September 16th, 1982, regulating the Court of Audit.

- **The International Conventions Adopted by Lebanon**

- The Universal Declaration of Human Rights adopted under alinea (b) of the Preamble of the Constitution.
- The Basic Principles Pertaining to the Independence of the Judiciary, adopted by the United Nations Conference held in Milano - Italy between August 26th and September 6th, 1985.
- The International Covenant on Civil and Political Rights of 1966.
- The Association Agreement between Lebanon and the European Union permitted by Law N° 474 of December 12th, 2002.

b-The Main Particularities of the Lebanese Judiciary:

In the French tradition, adopted in the Lebanese system, legislation is a part of the State product and is obligatory for the judge, whose job is confined to the interpretation and enforcement of stipulations (terms). Meanwhile, the positive law in the Anglo-Saxon tradition, emanates from the social experiences consolidated by the Judiciary in stipulations that have the precedent force (effect), i.e., the law originates from the society and is obligatory for the judge as much as it is convenient for the conditions or circumstances of this society.

Laws and judges have the same origin; a judge, in the French tradition, (same case for the Lebanese one) is trained and employed in an institute after he/she has graduated from law school in order to occupy the position of judge. Whilst in the Anglo-Saxon tradition, a judge grows in the civil community and plays a determined social role. He/she is then appointed or elected judge after proving his/her aptitude for such a position while carrying out their social responsibilities.

Hence, the Judiciary in the Anglo-Saxon system is much more independent, because a judge who graduated from and is appointed by the State's institutes is a part of these bodies, by which he abides, regardless of the texts that consolidate his independence. This point will be examined in the following section. For now, it must be clarified that the main task of the juridical/judicial authority is to solve the conflicts which are within its jurisdiction, even if this entails disregarding obligatory laws and conventions (usages), simply because the judiciary and its decisions takes precedence over existing laws and conventions (usages). For example, societies' need for a mechanism to solve conflicts, whether by reconciliation, arbitration or judiciary is far greater than their need for obligatory laws that could be futile.

However, a judge's power is not absolute while practicing the above-mentioned job, since there are differences in the judges' competences, jurisdictions and the degrees of courts within the same juridical/judicial system.

We have mentioned in the Introduction above that the Judiciary is one of the three public authorities laid down by the Constitution, whose entities, jurisdictions, and procedures, are regulated by laws. Courts, committees, boards, councils, and judiciary machinery are then established to implement the rules in force whose distinguishing features are generality and equality (Article 20 of the Constitution, and Articles 12, 43, 52, 97 of Judicial Judiciary Law)

Article 20 of the Constitution contains a comprehensive definition of the judicial power. It states that the judicial power, which is one of the three authorities, is a general and positive authority; that the judicial power is vested in the courts' various degrees and jurisprudences within one system; that all of these courts are but various components of the judicial power as one system; that these courts are made up of judges independent in carrying out their jobs; that guarantees are granted to judges and litigants as to realize the judicial power's objectives, and that the judicial power is exercised in the name of the Lebanese people, as embodiment of a sovereign people over its territories.

Consequently, the Judiciary, according to its jurisdictions, is varied. According to the texts of the Lebanese positive law that organize the Judiciary, there are seven different branches that represent various juridical/judicial occupations: the constitutional, political, juridical /judicial, administrative, financial, military, and exceptional Judiciary.

1. Constitutional Judiciary

This judiciary is represented by the constitutional council/board. This council/board is not a part of the juridical/judicial authority stipulated in article 20 of the constitution; it is an independent Judiciary originating from the article 19 of the constitution and it practices its jurisdictions according to the stipulations of law no.250 dated 14/7/1993 which created this Judiciary, according to the terms of its rules of procedures (bylaw) stipulated in law no.516 dated 6/6/1996.

The constitutional board is specialized in the constitutional control of the laws and other texts that have the empowerment of the law, as well as the settlement of contestations and conflicts emerging from parliamentary elections.

The way constitutional council members are appointed seems to be a guarantee for the judiciary's independence in a country like Lebanon (where favoritism and partiality are largely adopted), because the appointment of half the members by the parliament in a general assembly could put the council under the direct surveillance of public opinion. Furthermore, the appointment of the other half by the government could let the members be easily influenced by the parliamentary decision to respect impartiality.

However, there is a gap in the law of the constitutional council establishment that allows the executive authority to influence the council's members. Article 3 of the Code of Establishment allows the choice of members, among practicing judges, of the constitutional council. These judges have the right to reoccupy their previous positions as soon as their term of office at the council is over. Consequently, the prime minister or the minister of justice can influence the members of the council by tempting them with a better or worse position when they come back.

Furthermore, the number of people who can refer to this council is very restricted; therefore, it is necessary to broaden the right to consult, so that it encompasses committees and syndicates, as well as all those who have a representative role.

2. Political Judiciary

The political Judiciary is represented by the Higher Council, as stipulated in article 80 of the constitution, and it is not a part of the judicial authority, as stipulated in article 20 of the constitution. Likewise, the constitutional council is independent and autonomous, as stipulated in the constitution. It is specialized in the prosecution of presidents and ministers, according to the stipulations of law 13, dated 18/8/1990, related to the code of higher council procedures.

The higher council is formed of seven deputies elected by the parliament and eight others selected from the higher positioned judges according to the degrees of juridical hierarchy or seniority in case of equivalence of grades and degrees.

The presidency of the council is preserved to a judge and the fact that judges outnumber deputies signifies the independence of this council, as well as the cooperation between different authorities, as stipulated in the constitution.

However, the gap that should be avoided in the code of higher council procedures is that it is obligatory to have two thirds of the total number of deputies in order to indict a president or a minister; it is also obligatory to have 10 out of 15 voices of the council's members to have a trial. It should be noted that in both cases, it is thought better to have an absolute majority, i.e., half of the members plus one.

3. Juridical Judiciary

The juridical Judiciary courts represent the main axis of the juridical power, as stipulated in article 20 of the constitution.

Although this power exists through the constitution itself, its jurisdictions and rules of enforcement (as well as the guarantees that judges and litigants should have and the power of appointing judges, their transfer and remuneration, in addition to their administrative affairs) abide by the laws proposed by the government and promulgated by the legislative authority.

The constitution of this Judiciary with respect to the hierarchy is as follows:

i- The Court of Cassation (Supreme Court):

This court is the highest judicial authority in Lebanon. It is formed of one chief justice with the other presidents of the court chambers. These chambers have their own jurisdictions and each one is formed of one president and two counsellors. The chief justice distributes the tasks in these chambers. There is also one general prosecutor before the court of cassation.

This court is specialized in the revocation (overruling) of the decisions taken by the courts of appeal (appellate court) that were in breach of the juristic rules (article 703 of the civil court procedures). It is also in charge of settling conflicts between a judicial court and a spiritual or religious court.¹

ii- Appellate Court

There is one appellate court in the centers of all the provinces (*mouhafazat*). Every chamber in the appellate courts is formed of a president and two counsellors. These courts are specialized in examining the appeals of the verdict issued by the court of first instance or by the district judges (unique magistrate) with respect to the jurisdictions of every one of these chambers.

There is one general attorney before every appellate court; his role is to cooperate with the appellate general prosecutor (attorney general) and a circuit for the crimes and delinquencies investigations.

iii- First Instance Court

This court is composed of district judges (unique magistrates) or specialized chambers each composed of one president and two counsellors.

The jurisdiction of the district judges (unique magistrates) includes the examination of personal cases or those related to movable and immovable property (real estate), the value of which does

¹ In Lebanon, the Christian courts are known as *al-muhakam al-rouhiyyeh* [spiritual courts], while Muslim courts are known as *al-muhakam al-sherayyeh* [religious courts].

not exceed 100 million Lebanese pounds, as stipulated in article 80 of the Code of Civil Procedures. It also examines cases of personal status, with the exception of citizenship and limitation of succession cases, unless there is a litigation about the appointment of successors or determination of their shares. Furthermore, it examines cases related to the lease of movable and immovable property, free administration, possession (seizing, seizure), as well as preventing interference in the freedom of opinion, servitude, limitation of borders, summary proceeding judiciary, and execution matters.

The district judge (unique magistrate) is also specialized in the examination of contraventions, delinquencies, and criminal cases in general, as long as their sanction does not exceed three years.

The jurisdiction of the chambers lays in the examination of all matters that go beyond the jurisdiction of the district judge.

4. Administrative Judiciary

The state consultative council represents the administrative judiciary. It is a higher court that is in charge of the administrative judiciary and is in control of the elaboration of legislative and regulatory texts in accordance with what is stipulated in the relevant law.

The state consultative council is not a part of the judicial authority stipulated in article 20 of the constitution; it is part of the regulations of the judicial ministry of justice, according to article 2 of the bylaws of the state consultative council.

Therefore, the difference between the judicial judiciary and the administrative judiciary regarding the administrative and regulatory subordination is that the members of the state consultative council (the judiciary that controls the administrative judiciary's performance) are appointed by a decree decided within the government, whilst the members of the higher judiciary council that supervises the performance of the judicial judiciary are appointed by a regular decree based on the suggestion of the minister of justice.

Hence, except for the decisions issued by the state consultative council in its capacity as a higher administrative court, the state council in all its jurisdictions is the juristic hand of the executive authority through the minister of justice. Being a supreme administrative court, the council is also affected by the executive authorities, mainly because the judges, delegated by the council to act as legal consultants for the presidency of the government according to the stipulations of article 59 of the bylaws, have to stay as members in one of the council's chambers specialized in studying

the relevant cases. As a result, some doubts are raised concerning the ability of these members to preserve the principle of separation of powers and their ability not to be influenced by the tasks that they are in charge of outside the council.

Consequently, it would be better to assign the state consultative council's judges with counseling tasks outside the framework of the administrative judiciary powers. Counseling tasks within this framework could be assigned and to consign this task to the consulting and proceedings authority in the ministry of justice in order to protect the administrative judiciary from being influenced by what is not related to its main task as judiciary.

5. Financial Judiciary

The audit court represents the financial judiciary; it is an administrative court that ensures the safety of public money and the amounts placed with the treasury by controlling the use of this money, enforcing the respective laws and regulations in force, and by determining if the validity and legality of accounts and transactions.

The audit court expresses its opinion regarding financial matters after a request presented by public administrations and institutions, as well as the municipalities and all the authorities and commissions that are under its control. (Article 87 of the decree 1983/82)

Administration wise, the audit court is related to the prime minister; and due to this relation, it is not a part of the juridical authority stipulated in article 20 of the constitution, but part of the executive authority.

The chief of this court, the general prosecutor and the heads of the teams are appointed by a decree of the government after the prime minister has suggested it.

This court has a board formed of the chief, the general prosecutor, and the three highest-graded judges. This board has on the court the entire jurisdiction that is given to the higher judiciary council regarding the judicial judiciary.

6. Military Judiciary

This judiciary is represented by the military courts formed of:

- Cassation Military court (court-martial) located in Beirut.
- Permanent Military court located in Beirut

- Military district judges in the provinces
- Government delegate and his assistant
- Examining (investigating) magistrate.

The military judiciary is not stipulated in the constitution; however, it originates from the laws. The same applies for the jurisdictions (law no. 68/24 dated 13/4/1968). This law has given the minister of defense all the jurisdictions regarding the military judiciary that are given to the minister of justice in the judicial judiciary. Consequently, the military chief justice and members of the military court report directly to the minister of defense while in force (articles 13 & 14 of the law enforced by the decree 1460 dated 8/7/1971). The military judiciary is an exceptional judiciary by virtue of its jurisdictions. (Article 27 of its law)

Additionally, in wartime, it is possible to establish special martial-courts for the armed forces according to a decree adopted by the government and suggested by the minister of defense after an opinion poll of all the higher military authorities.

In all the texts relevant to the military judiciary, the role played by the executive authority, represented by the ministry of defense, is obvious in the establishment of martial-courts and in the appointment of judges, as well as in connecting these judges to the institutions. Consequently, this will affect their performance, as the military judiciary is turned into an organization and a tool outside the judicial authority, as stipulated in article 20 of the constitution.

7. Exceptional Judiciary

The exceptional judiciary is represented by the seizure committees and the disciplinary board (council) and other courts and judicial committees formed in order to execute particular missions in exceptional circumstances. These courts do not originate in the constitution but rather in the stipulations of the positive law. These courts are not within the judicial authorities stipulated in article 20 of the constitution; they are somehow linked to the executive authorities, regarding their foundation or performance.

Hence, it is obvious that all the branches of the Lebanese judiciary system are linked in one way or another to the executive authority. Consequently, in order to preserve judiciary independence, it is essential to break the chain that links them together, and to then assign judiciary matters to a higher authority elected by the judges themselves.

Part Three: 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:

1. The Guarantee of Judicial Independence
2. Institutional and Personal/Decisional Independence of the Judges
3. Adequate Training and Continuing Legal Education
4. Adequate Qualifications and Objectives and Transparent Selection Process
5. Income and Asset Disclosure
6. Conflict of Interest Rules
7. The Right to a Fair Trial, Equality Under the Law and Access to Justice
8. Fair and Effective Enforcement of Judgments
9. Public Access to Legal and Judicial Information
10. Judicial Access to Legal and Judicial Information

A. Independence of the Judiciary According to the Texts

1. The Guarantee of Judicial Independence:

Clause/section E of the introduction of the Lebanese constitution (added by the constitutional law 90/18) states that the system is founded on the principle of the separation of powers, their balance and cooperation. Furthermore, clause/section B of the introduction assures that Lebanon is an active founding member of the United Nations Organization, is committed to all its conventions and to the international declaration of human rights, and that the state supports these principles in all fields and domains without exception.

The constitutional amendment in article 19 of the constitution in 1990 created the constitutional board to control the constitutionality of laws.

Article 20 of the constitution stipulates that the courts of different degrees and jurisdictions are in charge of the judicial authority within the framework of the system set by the law, according to which the judges and litigants obtain the necessary guarantees.

Article 1 of the code of civil procedures stipulates that the judiciary is an independent authority, in regards to other authorities, in matters of the establishment of a case as well as pronouncing the relevant verdict, and any restriction not stipulated by law cannot limit its independence.

Article 4 of the judicial judiciary stipulates that the higher judiciary board should make sure the judiciary is performing well, and preserve its dignity and independence.

Article 44 of the judicial judiciary law, decree-law (legislative decree) 83/150, stipulates that judges are independent while practicing their jobs and they cannot be transferred or dismissed off the judiciary unless stipulated by law.

Article 19, clause/section 2 of the state consultative council regulations, stipulates that the state consultative council office should make sure the administrative judiciary is performing well, and preserve its dignity and independence.

Article 419 of the penal code stipulates that every person who supplicates or pleads with a judge for or against one of the litigants, verbally or in writing, shall be sanctioned.

1-1-Texts that Hinder the Judicial independence Principle

As we have seen, the Lebanese constitution has ensured the independence of the judicial authority by stipulating its foundation as a center of independence. However, the constitution left the details of judicial activity to the general law. This law has eliminated all the contents of the constitutional text and made of judiciary a simple job and of the judicial system an administrative system, i.e., the higher judiciary council/board no longer has the necessary jurisdictions, which made it the highest reference for the judiciary.

Despite the texts mentioned above that theoretically consolidate judiciary independence, there are some texts that hinder this independence, such as the one that stipulates the appointment of higher judicial personnel by a government decree. Other examples are:

Article 26 of the judicial judiciary law related to the appointment of the chief justice of the cassation court, consequently the chief of the higher judiciary council.

Article 5 of the state consultative council regulations related to the appointment of the chief of the state consultative council and the president of the office of state consultative council.

Article 31 of the judicial judiciary related to the appointment of the general prosecutor at the Supreme Court.

Articles 100 and 101 of the judicial judiciary, related to the appointment of the chief and members of the judicial inquisition body.

In addition, the government commissioner to the state consultative council, the president and general prosecutor of the audit court and the chief justice of the different chambers are all appointed by government decrees.

There are also the texts about the appointment, selection and transfer of judges that hinder the independence of the judiciary, because it allows the executive authority to interfere in the functions of a judge.

In effect, the executive authority has actual authority over the administrative and functional aspects of the judicial authority. It also practices its right to settle any disagreement between itself and the judicial authority regarding the administrative issues related to the judges.

As we saw above, the constitutional legislation is founded on the principle of having one source for the legislation for the definition and declaration of the people's rights and obligations, without any discrimination or distinction. The judiciary is the authority assigned to implement these laws independently from other authorities, up to the limits allowed by constitution, provided that this implementation is done honestly.

Theoretically, courts should be general so that litigants standing before them already know that they exist and are aware of their regulations and codes of procedure.

However, things are generally different in Lebanon, since there is a wide range of special courts (courts, boards, commissions). The Lebanese judicial system is in fact a large group of special courts with the addition of exceptional courts, such as the judicial council.

There is no single judiciary system in Lebanon, but there are different sets of laws, among which the judicial judiciary law is the most important. The

Lebanese judicial system is generally based on different basic judicial groups of which emanate special and exceptional courts, such as the recently created constitutional judiciary.

Therefore, and contrary to the constitutional and international texts and principles adopted by Lebanon, Lebanese regulations encompass a large number of courts and judicial committees/authorities, many of which contradict the contents and purpose of these texts.

Article 84 of the judicial procedures stipulates that "the special courts are in charge of examining exceptionally some litigation according to the relevant laws and regulations and the stipulations of the law that do not contradict them."

This follows article 81, which discusses the different judicial parties, such as the civil, administrative, religious or spiritual judiciary that restrict the special courts to the civil judiciary.

Consequently, the civil judiciary is the only one concerned by article 20 of the constitution; it is also the only one to be called “the judicial judiciary”, and the one that should meet all the basic conditions of the judicial authority. All the rest is nothing but exceptional and special Judiciary and this judiciary does not meet any of the conditions of article 20 of the constitution, the international declaration of human rights, the international convention for civil and political rights, or the basic principles of the UN, not practically nor legally.

1-2-Types of special courts

It can be noticed that most of these special courts have no relation to the Lebanese state. Furthermore, they do not implement Lebanese or international laws and are not formed of judges, in the traditional sense. Moreover, some of its judges are non-Lebanese, contrary to the aforementioned stipulation by article 12 of the constitution that restricts the right to occupy public functions to Lebanese individuals.

- Special Courts Related to the Lebanese State:

- The Sunnite and Shiite Religious Court and the Druze Confessional Court:

The employees of these courts are official employees appointed by republican decrees. However, these courts do not issue their verdicts in the name of the Lebanese people contrary to article 20 of the constitution; they partially implement Lebanese law, i.e., most of its stipulations and procedures are based on special legislative principles that are part of the Lebanese legislation. Furthermore, the judges of these courts do not fulfill the conditions of the science of positive law.

In general, these courts do not respect the rules of international law that should be respected by the state, since article 2 of the Civil Procedures Code stipulates that the stipulations of international conventions take precedence over the implementation of general laws.

These courts admit the verdicts issued by religious references outside the Lebanese territories and authorities living in countries that don't admit the authorities' power or the religious courts and apply the civil code. Consequently, these courts go beyond the state's relationships and establish their own relations with committees that are not admitted in their own countries.

These courts implement laws that discriminate between men and women, which is a contradiction of the Lebanese constitution, the International Declaration of Human Rights and the International Convention for Civil and Political rights that obliges authorities to treat citizens equally, regardless of their sex. For instance, in some courts, a woman may inherit half of what a man inherits, or she can be deprived of her inheritance if she does not belong to the same religion as her husband. These religious courts also admit a man's right to declare unilateral divorce.

-The Christian Religious or Spiritual Courts and the Israeli Community:

All that has been said above regarding the religious courts can be applied here, with the following additions:

The judges in these courts 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. In addition, many of these judges are not Lebanese, contrary to article 12 of the constitution.

The appeal of some of these court verdicts takes place outside Lebanon, and are implemented by Lebanese authorities as if they were

issued in Lebanon, contradicting all the principles of independence and sovereignty.

It is strange to notice that the law issued on 2 April 1951, related to the determination of the jurisdictions of the Christian communities' religious references, in addition to the Israeli community, qualified these references, including the special spiritual courts of "authority", as if they were general authorities established out of the constitution's frame, in parallel to the Lebanese national authority and contrary to all the legal and constitutional principles.

Accordingly, there is an obvious example of the fact that these references enjoy the status of public authorities, disrespecting the constitution: the recently published article in issue no.50 of the Official Journal about a new personal status code for the Greek orthodox community, signed solely by their Patriarch, without any civil or constitutional reference. This contradicts the mechanism of law issuing and publishing, whereby a new law should be voted upon in parliament and published under the name of the president of the republic.

- Arbitration Councils:

Most of the members of these councils are not judges.

- The Permanent Military Court and the Appellate Military Court:

Most of their members are not judges.

- Seizure Commissions:

Most of the normal commissions' members are not judges. As well, the decisions of the commissions generating from the law no.117 related to the seizures/appropriations of the Solidere Company are not issued in the name of the Lebanese people.

- The Judicial Council/Board:

The status of the judicial council as a one-degree court (i.e., no appellate, revocation or revision of its verdicts) contradicts the constitutional principle of the different degrees of a trial, and is opposed to the basic principles related to the independence of the judiciary, adopted during the UN conference in Milan in 1985.

- The State Consultative Council:

The state consultative council does not meet the condition of the judicial independence principles because of the obvious contradiction between its judicial consulting role for the Lebanese state in administrative issues and its role as an administrative court. In many cases, the members of this council are assigned to work as consultants for some officials or to hold an administrative function.

In its trials, this council violates the principle of openness to the public (consolidated by the law and article 10 of the international convention for civil and political rights, as well as by article 14 of the international declaration for human rights), since it does not hold its sessions in the presence of litigants, and lawyers submit written pleas rather than pleading before the public.

The verdicts of the state council are not issued with obligations to the Lebanese state, since its verdicts are not executed by force, but are left up to the goodwill of the state. In reality, this does not apply in most cases and contradicts the principle of equality and justice. Furthermore, the council does not oblige the assigned employees to properly enforce the verdicts.

- The Higher Judicial Council:

As we have mentioned above, Article 4 of the Juridical Judiciary Law states that the Higher Judicial Council shall ensure the proper function of the Judiciary, and the preservation of its dignity and independence.

This Article, in addition to the constitutional principles mentioned above, places an emphasis on the independence of the Judiciary. The question remains, however, whether the Higher Judicial Council is capable of ensuring such independence.

Pursuant to Decree-Law N° 150 of September 16, 1983, amended by Decree-Law of 23 March 1985, the Higher Judicial Council shall be made up of 10 members as follows: the Chief Justice of the Supreme Court/Court of Cassation as President, the Supreme Court General Prosecutor as Deputy Chief Justice, and the Chief of the Judiciary Inspectorate as Member. These members are permanent in view of the offices they hold. There are also non permanent members distributed as follows: Three judges nominated from among the Presidents of Supreme Courts Chambers; two judges nominated from among the Presidents of the Court of Appeals Chambers; a judge nominated from among the Presidents of the First Instance Courts Chambers, and a judiciary judge nominated by the Minister of Justice from among the Presidents of the courts or the Presidents of the departments within the Ministry of Justice. The non-permanent members are nominated by decree at the suggestion of the Minister of Justice.

It results from that has been stated above that the executive power, although the constitutional system is governed by the principles of Separation of Powers, and Checks and Balances, is the one which nominates all the members of the Higher Judiciary Council. In fact, this limits the independence of the judiciary body, and adversely affects its performance.

Thus, all the Lebanese judiciary courts are tied in one way or another to the executive power. It is therefore imperative for the preservation of the judiciary independence that the judiciary and the executive be separated, and that judiciary matters be referred to a higher body elected by the judges themselves.

B- The Principles Governing the Judge's Personal Rights

2. 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.

On the other hand, the decisions that the council of state acting in its capacity as higher administrative court comes to, caused it to be, in all of its competencies, the right-hand legal body of the administrative power vested in the minister of Justice. Be that as it may, 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 59 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.

In consequence, it would be better not to entrust the judges of the Constitutional Council with advisory tasks in matters falling outside the jurisdiction of the administrative judiciary, rather to entrust them to the Advisory Board within the Ministry of Justice, so as to prevent the administrative judiciary from being influenced by extrajudicial factors.

It is plain, from most of the texts related to the military judiciary, that the executive power vested in the Ministry of Defense, is much involved in establishing the military courts and appointing its judges, thus tying them to the executive power's institutions. It, consequently, plays a major role in influencing the military courts performance. This what makes the judiciary power mentioned in Article 20 of the Constitution, extend not to the military jurisdiction, as a system as well as a panel.

Not to mention the matters that are referred to the judiciary Council via the executive power as it will be stated *infra*, and the appointment of the Supreme Court General Prosecutor by a decree adopted by the Council of Ministers, and the wide power vested in the Ministry of Justice who may issue a requisition order to the general prosecutors, especially to the Supreme Court General Prosecutor, to hold an enquiry into a case.

3. Adequate Training and Continuing Legal Education:

As we referred to under the second point of this study, training judges is principally done, in Lebanon as in all countries adopting the French system, in a judiciary institute. Upon graduation, the judges are appointed to offices within judiciary corps. Judges may also be elected from lawyers, only in exceptional circumstances.

In Lebanon, an Institute for Judiciary Studies was established by Decree N° 7855 of November 16th, 1961, and regulated by Decree N° 10494 of September 4th, 1962.

To be eligible for admission to the Institute for Judiciary Studies, an applicant must pass the Institute entrance examination, hold a Bachelor of Laws degree, be of full legal competence, not convicted, under a specific legal year of age, and satisfy other general public service admission requirements. Once the requirements are satisfied by candidates, a decree shall have to be issued nominating them as apprentice judges who, still, need to take the oath (Articles 1, 2, 3, 4, of Decision N° 276 dated March 18th, 1967, of the Institute Status).

The Institute operates on a 3-year program of study. Exams are administered biannually. Examinations can only be taken by those who have fully attended the prescribed courses, unless valid reasons for absenteeism were presented.

The program of studies and apprenticeship within the Institute includes the following:

- 1- Advanced theoretical studies relating to various important legal topics, ranging from civil to criminal and administrative.
- 2- Workshops aiming to study cases, and to draft decisions thereof.
- 3- Preparation of extended studies and researches in such topics as shall be designated by the Director of Judicial Studies under the supervision of the President of the Institute.
- 4- Discussion of jurisprudential and doctrinal issues with attempts to find a logical solution therefor.
- 5- Holding meetings and seminars among the apprentice judges, and with other persons authorized to be affiliated with the Institute, directed by the President of the Institute or the Director of Studies.
- 6- Summarizing contemporary cases ready for publication in the Judiciary Bulletin, and providing commentaries therefor.

The program of studies and apprenticeship outside the Institute includes the following:

- 1- To carry out acts in the courts assigned to the apprentice judges by the judges to whom they were referred, or by the Minister of Justice with the approval of the President of the Institute.
- 2- Conducting visits to penitentiary institutions and houses of correction and juvenile centers of arrest, with a view to examine their status and study their activities, especially those related to the application of criminological sciences.
- 3- Conducting visits to public administrations, and economic and financial institutions, with a view to examine their status, administration, and activities.

In addition, the Institute program of studies offers theoretical and practical courses related to judiciary psychology, judiciary ethics, the art of judging, jurisprudential logics, and other courses related to general education.

Along with the grades obtained by apprentice judges in the aforementioned courses, another “good behavior grade”, which is equivalent to the 1/5 of the general grade, is given by the Chief of the section to which is referred the apprentice judge.

Apprentice judges are not considered admitted unless they attain a cumulative average of 14/20 of the grades obtained in all the courses taken during the three years of judicial studies at the Institute.

The apprentice judges are subject to the judiciary status with regard to specification for the behavioral penalties.

4. Adequate Qualifications and Objectives and Transparent Selection Process:

Upon graduation, the judges accede to various judiciary departments as principal judges, according to the specialty on the basis of which they had enrolled at the Institute, upon ascertainment by the Higher Judiciary Council, and issuance of an appointment decree at the suggestion of the Minister of Justice.

Because of shortage of judges, and because there is not enough of the principal judges needed, lawyers or associate judges may be appointed in Lebanon in certain circumstances as may the law determines. In fact, Law N° 426 dated June 6th, 2002, allows the appointment of principal judges from lawyers four years following its promulgation.

Nominated lawyers must meet the requirements of the appointment of apprentice judges, except for the age requirement that must be under 47 as of the date of the competitive examination; pass the competitive examination, and have a preliminary interview. Passing lawyers are awarded one grade for each three complete years of law practice as from the registration date in the general roll, on condition that, disregarding the number of years of law practice, the grades exceed not the six grades. A decree shall have to be issued appointing the lawyers-judges at the suggestion of the Minister of Justice, and with the approval of the Higher Judiciary Council or the Council of State.

The appointed lawyers-judges are subject to a 6-month course of study especially provided for them, at the Institute for Judiciary Studies.

4-1-Regarding the Judicial Judiciary:

- The apprentice judge is appointed after he/she has passed an examination and after being chosen by a decree adopted following a suggestion of the minister of justice, right after the approval of the higher judiciary council. The higher judiciary council permanently appoints the successful apprentice judges and then they are appointed as true judges in virtue of a decree adopted after the suggestion of the minister of justice.
- Individual or group transfers and attachments, as well as the delegations, are accomplished by a decree after the approval of the higher judiciary council and the minister of justice.
- In case of a disagreement between the minister of justice and the higher judiciary council, a common session is held in order to review the issues that are the subject of disagreement. In case the disagreement persists, the issue is raised to the government, simultaneously making the executive authority the litigant and the referee.

4-2-Regarding the Administrative Judiciary:

Similarly, in this case, the matter is raised to the government, which will settle the disagreement between the minister of justice and the office of the state consultative council office. Furthermore, many special courts are set up according to decrees issued by the government, and their judges are chosen by decisions taken by the minister of justice.

4-3- Transfer, Promotion, and End of Service:

The United Nations Declaration of the Basic Principles of Judicial Independence has provided, under Articles 10, 12, and 13, with some details, for the principles and criteria that must be followed in nominating judges. The Declaration has also underlined 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. With regard to Lebanon, transfer of judges and their individual or collective attachments, or appointment of delegations, are made by a decree at the approval of the Higher Judiciary Council and the Minister of Judges, as we have stated above in the course of our study of the various forms of the judiciary. Many factors are taken into consideration, such as seniority and experience in particular, yet others that have, directly or indirectly, a dominant influence over transfer and appointment to higher offices.

The Articles that we have mentioned above, and which are included in the Juridical Judiciary Law, the Status of the Council of State, of the Audit Court, and of the Judiciary Inspectorate, and other texts pertaining to transfer/movability, appointment, and selection of judges, are subject to the influence and the interference of the executive power, especially that appointment and transfer to higher positions are made by a decree adopted by the Council of Ministers.

Transfer/Movability among courts and departments is made at the beginning of each judiciary year. Judges are subject to a rotation system every two years, which we think is among the factors that make judiciary activity, as well as the judges' personal life, unstable.

We must point out the fact that the higher positions in the Judiciary, be it with regard to appointment or transfer, are still subject to community quotas to the detriment of qualification or experience.

We have already mentioned above that the Lebanon that has signed the United Nations Declaration of the Basic Principles of Judicial Independence, should take these principles as the basis for judicial to reform, as to the criteria that must be adopted as to appointment, transfer, and promotion.

Last, judges' judicial services extend until the age of 68 years, which exceeds by four years the age requirement in any public employment service. Also, the members of the Constitutional Council may be selected from among retired judges. The judge's service may be terminated by either dismissal for such professional, disciplinary or criminal reasons as may be restrictively determined by the law, or by resignation.

5. Income and Asset Disclosure:

Before detailing the judges' income, we must point out Article 4(1) of Law N°154 dated December 27th, 1999, known as the Law of Unjust Enrichment, which 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 owned by them, their spouse, and their children minors.

The judges' income is constituted of various elements, the most essential of which being the judge's monthly salary that differs and increases according to the judge's degree within the Judiciary.

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.

Among these additional incomes are those originating from the judges' mutual fund which was established by Decision N° 66/1/K, dated March 4th, 1982, issued by the Ministry of Housing and Cooperatives, and regulated by Decree-Law N° 52 dated July 29th, 1983.

The Fund's incomes are constituted of the affiliated judges' dues, of the financial contributions allotted in the budget of the Ministry of Justice according to the need of the Fund, of the fees collected from the value of the actions pledged before the courts, in addition to the stamp fee of the Judiciary Mutual attached to these actions, of the lump fees collected out of the general and particular corporate registers transactions, and of 30% of the fines resulting from court decisions, aids, donations, wills, loans, etc.

The Fund provides such services to the affiliated judges, and to their families, including social, medical, educational, cultural, housing, emergency situations services, as may be determined by the Fund's Board of Directors.

In addition to the monthly salary, and the Mutual Fund services, some judges receive for their services, monthly compensations, such as those given to members of the Judicial Council by virtue of Decree N°7715, dated December 23rd, 1995, or those provided under Article 15 of Law N°19/68, dated February 7th, 1968, which set the compensation at 50% of the basic salary. This ratio was provided for by decree 10180, dated June 13th, 1968.

The judges appointed outside Beirut receive, in addition to their salary, a transportation costs percentage ranging from 7% to 15%, depending on the distance of the courts to which they are appointed from the capital.

Also, the judges commissioned, on top of their judicial service, to other tasks such as sitting as members in committees (appropriation; opposition to taxes, etc.) or as advisors or members of other judicial body, also receive compensations besides their salaries.

Furthermore, the law has permitted the judges to carry on various activities along with their judicial jobs, such as teaching or doing research in law institutes and faculties, and research centers.

6. Conflict of Interest Rules:

Article 44 of Decree-Law N°150/83 (Law Regulating the Juridical Judiciary) provides that judges shall perform their duties independently, and shall not be moved or dismissed from the judiciary, unless otherwise provided by the law.

Article 47 of the same Decree-Law 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 upon authorization given by the Minister of Justice regarding the judiciary judges, or from the President of the Council of State regarding the Council of State judges, or from the President of the Audit Court regarding its judges. This authorization functions on a yearly basis, on condition that the number of teaching hours exceed not the 125 hours a year, and that the judge becomes not a full time professor.

Also, Article 48 of the same Decree-Law, and Articles 14 and 15 of the Status of the Council of State, allow judges to be transferred to another public administration or public institution cadre, subject to their own consent.

Judges who wish to post as candidate to parliamentary or municipal elections must submit their resignation from the judiciary one year preceding the date of the elections, during which they must definitely stop practice their judicial profession. Under Article 50, judges in this case, shall not be able to be appointed again to any judicial profession whatsoever.

C- Equity, and Protection of Rights

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

Article 7 of the Constitution adds another prerequisite, namely, ensuring equitable trial for all, and full protection of civil rights. In other terms, trials must be public, and proceedings adversary.

In fact, the Lebanese Parliament has ratified the Universal Declaration of Human Rights of 1948. This Declaration of which Dr Charles Malek, the representative of Lebanon at that time, was one of the drafters, underlines full equality to public hearing and fair trial. Article 10 of the Declaration provides that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal for the determination of his rights and obligations.

Lebanon has also ratified the International Covenant on Civil and Political Rights of 1966, which added a ninth prerequisite, namely, the right to appeal in criminal cases, affirming thus the principle of double degree in criminal judiciary. This prerequisite applies to all types of courts, since Article 20 of the Constitution provides different degrees for the courts in Lebanon.

The Lebanese judges only are entitled to hold the judiciary offices, since in accordance with Article 12 of the Constitution, public employments are to be assumed only by Lebanese.

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.

7-1- Transparency of the Judiciary:

This transparency is manifested, first, in the principle of grounding of judgments and decisions, which allows the courts to ascertain its legal cohesiveness in extending rights to litigants. Transparency also means that it is for the higher courts to review the correctness of the lower courts' decisions. Thus, lack of reasons adduced to a judgment is in contravention of national and international public orders, and a ground for annulling decisions, including foreign and arbitral decisions rendered in international litigations, and executable in Lebanon (Articles 536 and 104, Civil Procedure).

There is, however, the question of the military courts judgments which are rendered in a question-answer form, such as Decision N°192 of May 19th, 1995, (Al Nahar Newspaper, Supplement: The Right of People, January 1st, 1998), which mentions:

“And whereas the military court is not under obligation to provide reasoning for or to substantiate the conviction it decides, and whereas it suffices that it answers the questions shown, for it is invested with a supreme authority of appreciation that allows it to judge, at the discretion of this court, that there are sufficient proofs that carry much conviction for convicting defendants or declaring their innocence; and this appreciation is not subject to judicial review.”

Judicial transparency is also manifested in the public hearing, which is a basic principle consecrated by the Universal Declaration of Human Rights and the Lebanese statutes (Article 484 Civil Procedure). There are only few cases standing as exceptions to this principle, such as the procedures related to inquiries, and actions of domestic nature.

That the principle of public hearing is supported by the law, and is confirmed by the fact that anyone is entitled to assist to trial, does not mean that this principle is indeed being applied, except for cases of political nature or capable

of generating social upheaval, for rarely foreigners to the merits of the proceedings assist to trials. Add to this the prohibition of filming legal proceedings. This, actually, widens the gap between the citizen and the judiciary, and limits information about the trial to journalists who may, in certain cases, be led to alter the facts of the case as to mobilize the public opinion.

Because all inquiries are governed by the principle of secrecy, all judicial procedures are subject to citizens' doubts, especially when they are delayed, a reason for the media sometimes to make up some facts or to search out for them with unreliable sources, as it had happened in *Natalie Dabbas case* published in the Nahar Human Rights Supplement dated February 11th, 1998, where lot of rumors surrounding the victim death had generated disarray in the public opinion, and damaged the reputation of people at whom the media had pointed the finger of suspicion without taking into consideration the course of inquiry, yet not a shred of convincing evidence of a link between them and the cause of her death had existed.

The solution lies in this, speeding up inquiries or giving general prosecutor and examining magistrates the right to release the minimum information capable of rectifying the rumors.

It is worth mentioning that legal proceedings in communal courts are usually not conducted publicly because of involvement of intimate and domestic matters. Add to this the fact that these courts are not under obligation to publish their opinions.

On the other hand, the Lebanese law allows the publication of dissenting opinions in the event of dissension within the court as to the legal outcome of the case at hand, be it civil, criminal or administrative, whereas the French law prohibits this publication, yet considers as null the French judgment that even refers to the case.

From this point of view, the Lebanese law constitutes a compromise between the French law based on the secrecy of collective deliberation and the English law based on the individual opinions of the court, it guaranteeing deliberation of the court on one hand, and dissension of opinions among its members on the other hand.

There is, however, an exception to the above-mentioned principle, namely, the law establishing the Constitutional Council with regard to decisions on the constitutionality of the laws.

7-2. Appealability of Decisions

The appealability of decisions is one of the important principles of the control and scrutiny of judicial employments. It is consecrated by the Lebanese law, as we have mentioned above under the study concerning degrees of proceedings. Suffice it to say here that there are special cases where decisions are unappealable, such as the decisions of the Judicial Council, the Constitutional Council, and the Council of State.

7-3. Accountability for Judicial Acts

a- Criminal Responsibility:

Judges who commit crimes in connection with their jobs, such as taking bribes, are subject to criminal prosecution on condition that a permit is issued, and which may lead to a trial according to special procedures before the Court of Cassation in bank, or the Criminal Chamber thereof, depending on the judge degree (Article 44 of the Judicial Judiciary Law).

The administrative judges, pursuant to Articles 28 and 29 of the Council of State Regulations, enjoy much more protective judicial privileges than judicial judges, especially with regard to arrest warrant.

b- Civil Responsibility:

A distinction must be made here between the Judicial Judiciary and other judicial bodies.

Article 741 *et s.* of Criminal Procedure provides the cases where judges are held responsible for their acts. The civil actions are pledged before the Court of Cassation in bank not against the judges concerned, rather the Lebanese State that is the sole party holding the right to have recourse against the judge for recovery of the compensations the payment of which had been made incumbent upon it. The law, thus, has drawn a line between litigants on one hand, and judges on the other.

There are no deviations from this rule, except for the cases where the State is directly injured by the judicial act, such as cases of denial of justice, fraud, bribery, serious wrong; and except for the cases where the public prosecution is held responsible for not following the specific procedures regarding *subpoena duces tecum* , and arrest warrant.

The said procedures apply to all the judges, be they judges in a court of law, examining magistrates, or public prosecutors, and before all civil and criminal tribunals and courts.

With regard to community courts a distinction must be drawn between the Christian religious or spiritual courts whose acts the communities take, if but theoretically, full responsibility for, and the religious and confessional courts whose acts the State takes responsibility for.

7-4. Administrative Control and Scrutiny:

The organs entrusted with controlling the judges' acts are the following:

- The Judiciary Inspectorate;
- The Caza Appellate Chief Justices, and
- The Higher Judiciary Council.

Committal to the Disciplinary Board is an authority solely entrusted with the Judicial Inspectorate. The Disciplinary Board is constituted of the President of the Higher Judiciary Council (or his deputy, if necessary), and of four judges nominated for one year term.

In accordance with Article 87 of the Judicial Judiciary Law, the Disciplinary Board decisions are unappealable. This text does not forbid the Council of State, however, from considering a recourse pledged by a judge against the Disciplinary Board's decision; for the Disciplinary Board is an administrative body of judiciary characteristics whose decisions thus are subject to review by the Council of State.

The Disciplinary Board competence ranges from addressing observation, to issuing decisions of dismissal.

We must point out that Article 90 of the Judiciary Judicial Law allows the Minister of Justice to discharge, at the suggestion of the Inspectorate Council the judge committed to the Disciplinary Board, with the consequence that the dismissed judge will earn half of his usual salaries and compensations.

The Judicial Inspectorate jurisdiction extends to all the juridical and administrative courts, the bodies attached to the Ministry of Justice and the Audit Court and their bureaus, and the Ministry of Justice central departments.

That which characterizes most the Judicial Inspectorate is its independence, and the fact that it is made up of judges of specified seniority designated by a decree adopted by the Council of Ministers, and who enjoy relative independence in their jobs: Although their transfer is subject to their own consent, the law stipulates, however, that they should perform their judicial duties under the supervision of the Minister of Justice.

The most important tools used by the Judicial Inspectorate to exercise control over judges is the agenda that the courts send via its Chief Justice to the Inspectorate, and which reveals their judicial activities and productivity, quantitatively speaking not qualitatively. The Judicial Inspectorate bases itself also on the inquiries into the complaints lodged directly with it by the citizens, or at the demand of the Higher Judicial Council or the Ministry of Justice. The Inspectorate is entitled to take actions on its own initiative though, such as visiting courts and examining their works.

7-5. Assuring Resort to the Judiciary

- The Executive power Direct Interference in Judiciary Activities:

This interference is manifested first in this, that the cases committed to the Juridical Council is done through the executive power, especially cases of political nature and dimension or cases which would perturb the public opinion and adversely affect internal and external national security. Thus, the public opinion still considers that the executive power plays a major role in influencing the Council's decisions which actually are of political rather than legal dimension.

On the other hand, the New Code of Criminal Procedure, Law N° 328 of August 2nd 2001, has not kept pace with the contemporary legislation placing a restraining arm on the power of Minister of Justice over the public prosecution, or on the influence that the executive power exerts on criminal prosecution.

Actually, Article 13 of the New Criminal Procedure Code has kept the appointment of the Court of Cassation Public Prosecutor as it had been, in virtue of a decree adopted by the Council of Ministers at the suggestion of the Minister of Justice.

And Article 14 thereof charged the Minister of Justice with the power of issuing a requisition form to the Court of Cassation Prosecutor ordering him to conduct prosecution in criminal matters that have come to his attention.

- Financial Difficulties Suffered by Petitioners:

In spite of the importance of the principle of gratis proceedings in consolidating the principle of full equality before the courts, the Lebanese legislator however has yet adopted it partially, only; for the law pertaining to judicial fees has charged litigants with various fees, the most excessive of which being the proportional fee for the execution of decisions and which reaches 2.5% of the requested or adjudged amount (Law 700/98). This fee extends to, and must be paid at, all legal proceedings, be it a first instance, an appeal or a court of cassation; add to this the judiciary mutual aid that reached the fifth of the proportional fee.

These fees are very high considering the economic situation in Lebanon.

In addition, we mention the attorney's fees that reach in many cases 20% of the requested amounts or of the agreed lump sums with the lawyer paying part of it in advance.

And what makes things worse is the limited judicial aid program, despite the tremendous efforts that have been made by the Bar in Beirut, and private institutions, to remedy this situation.

The Bar's efforts are not sufficient because of its weak financial capacities, and because of the impossibility to convince lawyers to give gratis counseling.

- Settlement of Disputes:

The low number of judges equaling 400, with some of them only having the required qualifications, since the brilliant students of law usually prefer to practice the law rather than being judges, makes that a large number of pending cases flagrantly delay judicial proceedings.

During 2003, the juridical courts had 180,000 pending cases, 5,000 of which before the Court of Cassation.

The slowness of settling disputes, and Article 108 of the New Criminal Procedure Code, has become a reason for denial of justice.

The legislator has insisted, through this Article, and under a humanitarian cover, that detainees should generally be released after six months of arrest for a felony, and two months for a misdemeanor, subject to renewal one time by a reasoned decision. This Article has not, however, mentioned the reasons for prolonging the period of arrests.

This amendment, along with the slowness of settlement of disputes, and the impossibility of rendering criminal decisions within the time limit specified under Article 108, have transformed the criminal courts in Lebanon, the cases reaching them one year following the time of the commission of the crime, into dead bodies whose work has been limited to issuing default judgments against arrested criminals who usually disappear or run away to abroad after being released according to the above-mentioned Article 108. This, actually, incurs damages on the rights of petitioners who do not obtain but non-enforceable default judgments.

8. Fair and Effective Enforcement of Judgments

8-1. Execution of Judicial Judgments

The basic rule governing civilized legislation forbid individuals from asserting their rights by themselves. Similarly, Article 429 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 200 thousand Lebanese pounds. He shall also be sentenced, in accordance with Article 430, to six months imprisonment if violent means are used.

In consequence, the authority that is charged with helping creditors or petitioners to assert their right by compelling the debtor or the convicted to execute the judgment, is the Judiciary Authority represented by the Execution Department, and by the general prosecution in criminal cases.

8-2. Procedure of Executing Civil Judgments:

The execution of civil judgments goes to the district judge, within the first instance court, sitting as President of the Execution Department, no matter what the merits of the execution or the value of the right is.

The judge president of the execution department is helped by associate judges who are chiefs of departments, chief clerks, and bailiffs in the judicial bureaus, in addition to the execution officer who has, besides the judge, a pivotal role in the Execution Department.

And considering that the execution of judgments is one aspect of state sovereignty, it therefore was limited to execution departments attached to the judicial judiciary to carry it out, whereas the spiritual courts judgments are executed through the Execution Department in accordance with Civil Procedure related to execution. This, actually, what Article 29 of the Law of April 2nd, 1951 provided. Another text related to the Sunnite and Shiite judiciaries namely, Law N° 245 dated July 16th, 1962, provided also the same, although it granted both judiciaries a limited power of execution by deciding provisional seizure of debtor's personal properties, of which he takes possession, or which are at a third party's place; it has also granted them the right to decide on attachment of debt. The same right was given to the Druze confessional courts.

Also, the competence of the Execution Department of Beirut covers the execution of judgments issued by the Council of State against individuals. The administrative execution of these judgments is not allowed by the laws.

The execution of judgments against the State is referred to the Council of State which commits them to the competent authorities for execution.

The executable civil judgments are the unappealable, *res judicata*, ones. They are executed after having an executory copy of the concerned judgment.

The means of execution are the normal ones applied in all countries, where they affect the debtor's assets without having recourse to any physical duress, except for the extremely limited cases, such as the case of alimony in civil status proceedings.

The means of execution applied by the execution departments are usually effective.

8-3. Procedure of Executing Criminal Judgments

The procedures followed in executing criminal judgments differ according to the type of penalty, which may be either imprisonment with or without hard labor, or capital punishment.

a- The imprisonment penalty may be a penalty involving personal restraint, such as penal servitude for life or imprisonment for life, or a detentive penalty such as temporary penal servitude or temporary detention. The qualification of penalty follows that of the offense, which may be a felony, a misdemeanor or a petty offense.

No matter what the type of the imprisonment adjudged penalty or period is, the convicted executes it in prison. And prisons in Lebanon are regulated by decrees adopted by the Council of Ministers.

Res judicata judgments that are rendered by the Court of Appeals or the Assizes Court or the Court of Cassation, are executed by the general prosecutor with the court issuing the judgment. District judges execute by themselves their criminal judgments. The same procedure is carried out in the juvenile court.

All of these judgments are executed through abstracts referred to the security forces.

Detainees in prison are visited once a month by the general prosecutor or the examining judge. S/He who is found arbitrarily detained will immediately be released.

Still, some cases are taken into consideration such as the impossibility of executing an imprisonment penalty against a pregnant woman until ten weeks after delivery, or of imprisoning a married couple leaving behind a minor at the same time, and the necessity of providing separate places for detainees

subjects to disciplinary penalty, and those convicted for a misdemeanor or a felony.

Those sentenced to hard labor for life or to life imprisonment are deprived of their civic rights for life, all other convicted criminals except for those who are sentenced to disciplinary penalties are deprived of these rights for ten years. They are also deprived of holding public office or of receiving Order of Merits.

b- Capital Punishment

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 that Lebanon has ratified the European Association agreement.

When the judgment becomes final, the Minister of Justice refers the file of the sentenced to death to the President of the Amnesty Committee or to a his/her representative, also sitting as the President of the Higher Judiciary Council, which has been entrusted with considering pardon petitions (Article 391 Criminal Procedure).

The President of the Amnesty Committee submits a report to the President of the Republic who issues a decree ordering amnesty or rejecting it.

The execution of capital punishment is done during working days, Sundays, Fridays and religious and national holidays being thus excluded.

The pregnant woman is not executed until ten weeks following her delivery.

The execution of the judgments is carried out in the presence of the Chief Justice of the court that have issued the judgment, the general prosecutor with this court, a judge of the civil first instance court within whose jurisdiction the place of execution falls, and whose task is to take notes of the convicted words and demands, in addition to the clerk of the court, the attorney of the convicted, a religious of the convicted religious community, the Director of the Prison, the Chief Judicial Police in Beirut, or the Chief Police Brigade in other caza, and last the medical doctor of the prison.

The execution of the capital punishment is carried out within the prison, away from the public.

Asserting its position vis-à-vis capital punishment, Lebanon executed on January 1st, 2004, three capital punishments. And what draws gasps of denunciation is the capital punishment executed in Lebanon in mid-nineties, after the Court of Cassation had rejected in form the convicted criminal's appeal, on the grounds that the attorney of the convicted had included in the

appellate petition only a photocopy of the Power of Attorney rather than the original thereof. Thus, the convicted could have been able to save his life had he not lost the opportunity of his case being considered by the Court of Cassation.

8-4. Execution of Foreign Judgments:

The Lebanese law considers as foreign judgments those that are issued by a sovereign power, be it a court or an arbitration body, other than a Lebanese one. Before these judgments are given executable form, they may constitute probative legal instruments for a precautionary measure.

The foreign judgments are given executable form in Lebanon upon submitting a request to the President of the Civil Court of Appeals within whose jurisdiction the defendant resides, or else to the President of the Appellate Court in Beirut.

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.

8-5. The State of Prisons and Detention Centers in Lebanon:

1- Organisation of Prisons:

The Lebanese legislator has regulated prisons and detention centers and juvenile correction centers by Decree N° 14310/N dated February 11th, 1949.

This decree has 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.

In fact, Article 2 of the said Decree, amended by Decree N° 2426 dated November 15th, 1979, states that “detainees, accused, and convicted are all placed in the Roumieh prison no matter what the period of the penalty is”. This, actually, constitutes a serious legal mistake, and contravenes humans rights laws; for it is as much inadmissible to place in one prison convicted along with detainees who are innocent until proven guilty, as to place all convicted in one prison without a distinction being made as to the crime committed and to the extent of its dangerousness, the personality of the convicted, criminal background and the extent of its dangerousness.

Although Article 8 of the above-mentioned Decree stipulates that “detainees or convicted minors shall be placed in special centers in accordance with the Criminal Law,” facts however point to the contrary, for instead of creating a institute for correcting/rehabilitating convicted minors which had been provided for by Decree N°6675 issued on August 6th, 1946, a place has been reserved to detainee minors in Roumieh prison, only.

The Lebanese legislator has not taken into consideration, as we have just mentioned, the principle of classifying prisons on the basis of the person convicted, except for the distinction made as to sex. Article 9 of the aforementioned Decree stipulates that “convicted women shall be placed in special prisons,” without however specifying a place for women placed under provisional detention during inquiries.

Thus, we notice today that the Lebanese prisons are jammed full of prisoners of all kinds, where convicted for a felony sit along with convicted for misdemeanors, let alone the fact that prisons in Lebanon do not keep up with health prerequisites standards, and do not meet the criteria that civilized countries follow.

2- The Rights of the Detainees Placed Under Provisional Detention:

2-1. The Right to Communication

The right of the person placed under provisional detention to communication is limited in Lebanon in virtue of Article 36 of the Law Regulating Prisons N°14310 issued on February 11th, 1949, with its amendments, which stipulates that detainees and prisoners shall not have the right to sent more than “two letters a week, at stated times by the Chief of the prison”. The latter has the right, under Article 21 of the same, to examine all letters sent or received by prisoners except for the letters submitted to judicial authorities or to central administrative authorities, which actually interferes with their right of privacy.

With regard to visits, Article 69 of the said Decree limits the period of one visit to 15 minutes, a period which actually is considered very short.

2-2. The Rights of Defense:

The rights of defense are not absolutely guaranteed for the persons placed under provisional detention; for Article 61 of the Law Regulating Prisons provides that detainees shall not have audience with their counsel unless permitted by the competent judge. This actually ties the rights of defense to the concerned judge's discretion whose decisions in this matter are not subject to any recourse whatsoever. Not to mention that the audiences with the lawyer are allowed under circumstances which encourage interference with detainees right to privacy and freedom of communication.

d- Principles Governing Publication of Legal and Judicial Information:

9. Public Access to Legal and Judicial Information:

Laws and decrees issued by various authorities in Lebanon are published in the Official Journal that appears weekly, and sometimes under special issues. This Journal, however, is not sold to wide public or distributed to private institutions. It can be provided through subscriptions or from specific libraries. The Journal is not computerized; it comes out in paperback, only.

On a private level, we may say that there are no integral data banks which provide complete legal data, and which are easily acceded to through electronic means. There are however private institutions that publish and distribute legal encyclopedia or books with elite clients. Most of these publications still come out in paperback only.

All judicial opinions are not published. There are few judicial journals that publish selected judicial opinions. The only means available for those interested in reading judicial opinions is to have copies of them from the court's clerk.

10. 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. In consequence, judges would not be able to have information about judicial opinions when they are rendered, for the time of issuing the opinion precedes, yet by weeks, the time of publication.

Part Four: A Broad Analysis Regarding Attacks on J.I.P :

The Way Lebanese Judiciary Handles Public Liberties.

On September 9th, 2002, 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 68 of Law N° 171 dated January 1st, 2002 (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).

The company owner of both news media and its employees lodged several appeals against the judgments, which were turned down in form without giving any consideration to the merits of the case.

There was widespread criticism from jurists, politicians, and citizens of the Lebanese judiciary's handling of the two cases. They had considered that the judgment ordering the shutdown had been severe, and that it had been rendered in result of political interference against the two mass media's main shareholder, and that the judiciary, it being the protector of rights and freedoms, should have taken into consideration, before rendering its judgment, the rights of the employees and their families, of the two mass media, which approximately reached 500 families, especially in light of the dire economic situations suffered by a large portion of the Lebanese population.

Still, the Constitutional Council had issued a decision ordering the annulment of the election of Representative Gabriel Murr, the main shareholder in MTV and radio of Mount Lebanon, for using the political media in his electoral campaign. All circles had joined in bitter denunciation of the decision, and expressed their regret at seeing the political interference reaching the Constitutional Council which is supposed to be, because of the activity it is commissioned to, away from gravitational pulls of politics.

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

The UN general assembly decided on 29 November 1985 the basic principles of the judiciary independence adopted at the UN conference held in Milan, Italy between 26 August and 6 September 1985. The first principle states the obligation to guarantee judiciary independence in the constitution and laws of the member states. The second principle states the obligation of being honest, while the eleventh principle states that people who are not honest, competent, qualified, and eligible cannot be chosen for judicial positions. This means that only those with a legal background can hold judicial positions.

In addition, the fifth principle related to judiciary independence contests the establishment of special courts and states: “every person has the right to have a trial before general courts that uses fixed legal procedures, and no court should be created if it does not use fixed judicial procedures in order to replace the general courts.”

In this line of thought, the National Understanding Act has provided for a form that consolidates the independence of the judiciary through the election of members of the Higher Judiciary Council by the judiciary body. No legislation has yet been adopted to that effect.

Also, 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, the most important among which being the projects suggested by the minister Issam Neeman in 1996, by the former President of the Bar Mr Marcel Syoofi, and by Boutros Harb in 1997, knowing that the latter had joined President Hussein Al Hussein in proposing a draft law pertaining to the judiciary authority, and which had been adopted by the Parliamentary National Meeting, and had been referred to parliamentary commissions for study, which is still pending.

All the mentioned projects, in spite of containing differences regarding the designation of the body and its constitution, have yet agreed on establishing unified higher body to be entrusted with judiciary concerns, whether judicial, administrative or financial. This body would replace the current bodies, such as the Higher Judiciary Council, and the Council of State, consecrating thus the independence of the judicial power vis-à-vis the other constitutional powers.

These projects grant the higher body wide jurisdiction over administrative, judicial, and financial bodies, be they courts, councils or committees. They also grant it the right to designation, transferring, commissioning, training, promoting, taking disciplinary actions, specifying qualification, fixing salaries and compensations, dismissing, pensioning off, defining competence, etc. In this manner, the higher body would effectively become the third power among

the other constitutional powers, enjoying thus financial and administrative independence.

These projects aim to divest of their power the Minister of Justice, with regard to ordering prosecution in matters of discipline, and the Council of Ministers, with regard to the right of the President of the Republic to call the body for reconsideration of decisions.

It is also worth mentioning some of the projects that had been submitted by the Minister of Justice for the handling of technical matters, such as decrease in the number of judges, judicial fees, etc.

Last, we may say that a project for judicial reformation must be general covering all aspects of the issues, beginning from the independence of the judiciary vis-à-vis the other constitutional powers, to dealing with the other details, such as the number of judges, their employment, administrative and living conditions, to providing solutions to problems suffered by litigants, such as lowering the judiciary fees in application of the principle of gratis justice, and equipping the courts with electronic means which would allow judges and litigants to have fast and accurate access to the desired legal datum.