



**The Arab Center for the Development of the Rule of
law and Integrity**

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

**Report on the
State of the Judiciary in Lebanon**

Second Draft

Author: Me Elias Chalhoub



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Chapter one: Contextual Background

1- Analytic description of the system – General Overview – Characteristics, basic aspects and national role

The Lebanese modern state was established in 1920 by joining the Mount Lebanon Province to the Provinces dislocated from the former Ottoman states of Beirut and Damascus.

Lebanon is formed sociologically of a large group of religious confessions embracing each and every Lebanese citizen. These confessions are generally divided into two large groups, the Christian confessions, comprising fourteen different denominations, and the Muslim confessions divided among four denominations.

The birth of all these confessions goes back in time. When Islam reached the Al Sham region, the Christian confessions existed already after many schisms in Christianity. Following the Arab conquest, Islam recognized the presence of these Christian and Jewish confessions and considered them to be officially established..

Since 1516, following the conquest by Ottoman Sultan Selim II of the Al Sham region, all Christian confessions were subjected to the Ottoman State.

Christian confessions safeguarded their status in the Ottoman State until its collapse in the wake of the World War I in 1918. This collapse triggered the emergence of many Arab states, including Lebanon. The most significant turning point in Lebanon's birth was the transformation of these Islamic groups into autonomous confessions, beside the Christian and the Jewish confessions.

The Lebanese people became associated with various recognized confessions which were granted the right to legislate. Article 9 of the Lebanese constitution ensured this right for the confessions, in all the fields of personal status, inheritance, testament, endowment, and adoption... including the right to establish their own courts.



The Lebanese people sociological status and their affiliation with various confessions showcased this privacy, and imposed the existence of different references with legislative powers which are:

- 1- The legislative power, the Lebanese Parliament.
- 2- the various confessions; knowing that Lebanon comprises 18 religious confessions, and each has the right to legislate, to issue private laws in the field of Personal Status.

The plurality in legislation sources implies inevitably the existence of courts with various charges, rules and entities subjected to various sources of governance and sovereignty that are not limited, in most of the cases, to the sovereignty of the Lebanese state and the public law. In fact, many Christian's communities' courts of Appeal exist in other countries.¹

The Ottoman state had adopted, since the midst nineteenth century, modern legislations influenced by French laws. These laws were applied all over the Sultanate, including the Mount Lebanon Province. However, a large part of the legislation remained subjected to the religious law and to confessional special laws, especially social status, inheritance and endowment affairs.

By the establishment of the Modern Lebanese state under the French mandate after the WWI, the mandatory power redrafted laws mostly influenced by French legislations, excluding personal status affairs. The mandate also safeguarded the confessions' right to establish their own confessional and religious courts in order to prevent any social crisis and avoid any rebellion by the adoption of laws directly related to the citizens' daily life.

Afterwards, the independence era consolidated the foundations of the mandatory power, since the French legacy is still dominant in spirit over all the laws, including those related to the judicial organization, even though some were inspired by other European texts or safeguarded texts inherited from Eastern societies. This is the first aspect of the establishment of the Lebanese judiciary; the second is the plurality of the judicial bodies, whether juridical, administrative, financial, political, constitutional or confessional (regarding the civil status affairs). Besides, were also formed many bodies

¹ The Rota in Rome – Courts of Appeal of many Christian Communities exist in Damascus and in other countries.



having a judicial aspect, such as the committee of Pleading against taxes, the committees of Appropriation, the Arbitral Councils and some special Courts. Although the judiciary is an independent power, the Lebanese judiciary is nevertheless committed to abiding by the written legislative texts issued by the legislative power represented by the Parliament, not entitled to jurisprudence in the explicit texts, pursuant to the principle of separate powers as stipulated in the Lebanese constitution.

Despite all these restrictive considerations, the Lebanese judiciary refers, whenever properly permitted, to the principles of justice and equality and to modern foreign interpretative judgments regarding Human Rights, democracy and protection of public freedoms. And despite all institutional and structural dilemmas the Lebanese state underwent, in addition to the administrative and political corruption whose effects are still impotent, and to many foreign occupations and tutelages, the Lebanese judiciary maintained an important role throughout history regarding the separation of powers, and conserved a well respected function unlike any other judiciary undergoing a similar major national crisis such as the Lebanese judiciary. While acknowledging that the lesson to be drawn and the criteria to be followed in assessing the characteristics and qualities of the judiciary lie in its comparison with the modern judiciary in the liberal systems which secure individual human rights and public freedoms, we cannot deny that the Lebanese judiciary is considered largely independent, in comparison with the judiciary in Arab countries and systems that shows no respect for the status of the judiciary and the judges.²

2- Judicial Organization

Article 20 of the Lebanese constitution included a comprehensive definition of the judicial power. According to this definition, the courts of different levels and jurisdiction assume this power under one system and represent a part of the unilateral system of the judicial power. These courts include judges that are independent in exercising their functions. Guarantees are granted for the judges and the litigants for the purpose of the judicial power

² Back Paper on the status of the Judiciary in Lebanon, Antoine Mesarra and Paul Morkos (attached to the report).



which is exercised in the name of the Lebanese people to reflect their sovereignty over their territory.

Thus, the judiciary, even unified, has various jurisdictions. This means that the judiciary has one reference which is the Higher Judicial Council (excluding religious and confessional courts, and the Constitutional Council). When examining the texts of the Lebanese positive law governing the judiciary, we find seven departments within the judiciary representing various judicial functions, which are: constitutional courts, political courts, judicial courts, administrative courts, financial courts, military courts and extraordinary courts.

a- Constitutional courts

These courts are represented by the Constitutional Council prescribed in article 19 of the constitution upon law number 250/93 dated July 14, 1993.

This Council is specialized in constitutional monitoring of the laws and texts having the power of law, and in adjudging on the disputes and challenges arising from and submitted after the parliamentary and presidential elections³.

This Council is not a part of the judicial power. The law constitutionality is under monitoring by a petition submitted within 15 days from the date of its publication in the official gazette. The President of the Republic, the Prime Minister and 10 Members of Parliament are entitled to present this challenge. The leaders of the recognized religious communities have the right to review as regards laws of personal status, freedom of belief, freedom of religious education more exclusively.⁴

b- Political courts

The political courts are represented by the Higher Council for the Prosecution of Presidents and Ministers as stipulated by article 80 of the

³ Articles 1 and 18 of the Law 250/93

⁴ Article 19 of Law 250/93.



constitution. This council is not a part of the judicial power; it is independent, just like the Constitutional Council, and consists of seven deputies and eight judges.

The flaw (gap) detected in its code of procedures is the necessity of having two thirds of the deputies for accusing a president or a minister before transferring to trial. The same rule applies for incrimination after trial, since it requires ten out of fifteen votes; it is more appropriate to achieve absolute majority.

c- Judicial courts

Judicial courts represent the pillar of the Judiciary, stipulated by article 20 of the Constitution.

Although this authority existence derives from the Constitution itself, its jurisdiction, rules of functioning and guarantees to be granted to judges and litigants, as well as the power to appoint, transfer and promote judges, determine their salaries, and settle their administrative affairs remain subject to the laws submitted by the Government and enacted by the legislative power.

This judiciary structure in decreasing order is as follows:

a- The Court of Cassation

This court is the highest judiciary power in Lebanon, composed of a principal president and heads of chambers with specific jurisdiction. Each chamber has a president and two counsellors. This court has also a Public Prosecutor.

The Court of Cassation jurisdiction is to challenge decisions rendered by the Courts of Appeal by reason of violation of law provisions, then it judges on merits. It is a Court of Cassation or a Supreme Court. It decides on the dispute between a court of justice and another religious or confessional court.

b- The Court of Appeal



The Court of Appeal exists in each district. It is composed of specialized chambers headed each by a president with two assistant counsellors. These courts examine all appeals submitted to it on judgments pronounced by the Courts of first instance or by the district judge.

Each court has a public attorney who works in collaboration with the Public Prosecutor before the court of appeal as well as an investigating department on felonies and misdemeanours.

c- The Court of First Instance (Primary Courts)

They are composed of district judges or competent chambers comprising each a president and two counsellors.

The jurisdiction of district judges is stipulated exclusively in article 86 of the Code of civil procedure and couldn't exceed a definite financial allotment. Consequently, the chamber's jurisdiction encompasses all cases not exhaustively included within the district judges' jurisdiction.

d- Administrative courts

They are represented by the State Council, which is a supreme court in charge of administrative cases, as well as monitoring legislative and organizational texts.

Administrative courts were established by virtue of law 227 dated May 31, 2000 as the first degree of the administrative judiciary; however, organizational decrees were not issued, and the law of these courts institution has not been activated yet.

The State Council is the first and last reference to examine demands of annulment because of the authority overstepping of proper bounds of practical and individual decrees and regulatory affairs stipulated by the ministers, cases of employees concerned by decrees, and petitions regarding individual administrative decisions.⁵

Yet, it still is the only reference (by reason of the non-forming of administrative courts) to examine petitions of remunerations for damages resulting from public affairs or from the administrative process of work at the chamber of deputies in administrative cases relative to administrative contracts, transactions or commitments performed by the public

⁵Article 65 of Decree n° 10434 dated June 14, 1975 (Regulation of the State Council)



administrations or public departments at the chamber of deputies to ensure public interests and also claim against employees because of their faults.

It is also an appealing authority for cases of direct or indirect taxes and fees, and for decisions having a judicial aspect issued by the Court of Audit.⁶

e- Financial courts

They are represented by the Court of Audit which is an administrative court in control of the public funds by monitoring their use and the compliance of use with the laws. The Court of Audit is empowered to prior and subsequent supervision and is administratively, related to the Prime Minister. Its judicial verdicts are challengeable before the State Council's- Military courts

They represent, because of their jurisdiction, a special judiciary (article 27 of their code of establishment). They are formed of district military judges, a permanent military court, a military court of cassation, investigating magistrates, a commissioner and assistants.

The military judiciary is not stipulated by the constitution, and was issued by law number 24/68.

Military judges heading military courts fall directly under the authority of the minister of defense (articles 13 and 14 of the law issued by virtue of decree number 1460/71)

This judiciary is most critical for it reaches citizens in their relations with soldiers, mainly for extra-military dealings⁷.

g- Extraordinary and Special courts

These courts are represented by the commissions of appropriation, the disciplinary council and other courts and commissions having a judicial aspect such as special courts, for example the Judicial Council examining crimes against the state security, banking courts relative to banks facing obstacles, etc... as well as arbitral councils and religious courts.

⁶Article 61 of Decree n° 10434 dated June 14, 1975 (Regulation of the State Council)

⁷ Refer to paragraph 4-1-1-1 of the present report.



It is worth mentioning that some members of these commissions and councils are not judges (commissions of appropriation and arbitral councils). The Council of Justice is a one-level court contrary to the principle of the court plurality of degrees. The religious and confessional courts contradict the principle of the judiciary unity because they are not submitted to the Higher Judicial Council and to the principle of the State Sovereignty over its external references for the most of the time.

3- Appropriate political, economic and social context

The mandatory power had established in Lebanon a democratic parliamentary regime based on free economy, similar to the established regime in France. It had consolidated the basis of economy on the principles of free economy, personal property respect and individual initiative. Thus, the Lebanese legislation and the civil judicial system were based thereon.

Lebanon still adopts a free economic system relying on individual initiatives and private investments, which made it a flexible economy. The Lebanese economy depends on the services' sector since the country lacks natural and energy resources. Therefore, its economy was mainly based on the sectors of tourism and banking.

During the civil war (1975- 1990), the Lebanese economy underwent a heavy blow due to the stagnation of tourism, the outflow of national and foreign capital toward countries with greater security, causing the intense deterioration of the national currency value in the eighties.

After Lebanon overcame its fifteen year long crisis, it had to undergo reconstruction, by activating investment, and trying to regain its role as a regional financial market. Therefore, new modern legislations were necessary to accompany international trade development and open markets.

On the date of 3/4/1999, the law relative to the protection of Literature and Arts property was promulgated under n° 75/99 in compliance with the international protection of such property exposable to piracy. On the other hand, Lebanon developed its financial legislations, more particularly Beirut stock market, Bank of Lebanon, Insurance companies, bank system, Ministry of Economy with the introduction of the E-Commerce through a project funded by the European Community, with the aim to give a greater protection to investments and modernize its administration.



Among the legislations issued in the eighties, the new Code of Civil Procedure which expanded the judge's freedom in investigating, deducing evidence and consolidating convictions. In the nineties, the new Code of Criminal Procedure was issued and established the principle of innocence until proven guilt.

In parallel with the legislative progress, the judiciary had to be updated since it is the pillar for establishing new legislations, safeguarding their efficiency, implementing, protecting and developing them by jurisdictions, and adjusting them to their social and economic dimensions. Therefore, the judiciary must be efficient, fast and conclusive in taking decisions and must inspire confidence. Consequently, the judges must be, in addition to their law education, more educated in economics, finances, and modern means for resolving all sorts of conflicts, such as arbitration in all dimensions especially international.. They must also get greater education on international, legal and contracting patterns based on multiple resources.

The Lebanese judiciary, during all the Lebanese political and security situations, underwent a physical and moral intimidation campaign that called into question its moral and educational potential as well as its financial capabilities.

Many judges were killed at the court's entrance and in their offices in the Palace of Justice. Lately, a Judge was subjected to many attempts of aggression⁸ after having been entrusted with the Al Madina bank file. These judges' colleagues felt they have lost all means of protection. Other judges fell under many sorts of pressure from politicians and tutelage authorities through intimidation and enticement. After the series of horrible crimes on the Lebanese forefront as of autumn 2004, the most dangerous and violent of which was the murder of Prime Minister Rafik Hariri and the following murders and explosions, Lebanon witnessed a period of moral liquidation of its judiciary considered as totally and fully incapable of facing these crimes and the current issues. The necessary measures for enhancing and upholding the judiciary to fulfill its role were neglected in the favor of exceptional international judiciary which does not represent an alternative and permanent guarantee. However, the public social awareness was lately growing when many called for developing and enhancing the judiciary, through many incentives in this regard. This came after the International

⁸ The judge is Nazem El-Khoury. This subject raised many questions and is full of suspicions.



Investigation Commission praised the competence, skills and professionalism of the Lebanese judges, and called for supporting them and consolidating self-confidence. Some of these initiatives were international and called for developing the judiciary technically (such as forensic and scientific laboratories, training and expertise).

4- Overview on Reforms- Is the Judicial system subject to controversy and does it accept a policy of reforms? How do the parties concerned with the judiciary view its reforms?

Undoubtedly, the status of the judiciary was tackled by the conferees in Taëf, after the painful events in Lebanon between 1975 and 1990, due to the collapse of all institutions in the war although the judiciary remained more solid than any other system. The Taëf Agreement stipulated a formula to uphold the judiciary autonomy through the election of members of the Higher Judicial Council by the judicial body. This formula, however, was not implemented and no legislations were endorsed thereto.

In the last few years, many called for radical reforms for the organization and the nature of the judiciary work in Lebanon. These reforms were included in many reform drafts submitted by jurists and politicians, mainly the one submitted by former minister Issam Naaman in 1996, the one submitted by the former President of the Bar Mr. Marcel Sioufi, and the one submitted by MP Boutros Harb in 1997. The latter cooperated with the former Speaker Mr. Hussein Husseiny in formulating the draft known as the proposal for the judiciary law, adopted then by the parliamentary national gathering and referred to the parliamentary commissions (Commission of Administration and Justice) to be examined. However, it has not been discussed yet.

Many jurists showed interest in judicial reform such as Mr. Sleiman Takieddine who drafted a project of reforms and carried out multiple studies in this regard.⁹

The drafts reflect the growing urgent need for reforms, especially in the last few years, after the explicit political interventions in the judiciary by pressuring the judges directly to return verdicts in favor of certain politicians. A major lack was detected in the modern equipment granted for the judiciary after the murder of late Prime Minister Rafic Hariri as well as

⁹ See the references at the Arab Center for the Development of the Rule of Law and Integrity.



other previous and subsequent security incidents and murders that remained unpunished until today and required the intervention of international justice.

Undoubtedly, the Lebanese judiciary endorses the reforms policy especially that this system represents, by virtue of the constitution, an autonomous power towards the executive and legislative powers. The Lebanese judiciary is very different from the judiciary in many countries, including the democratic countries, such as France, where the issue of deciding whether the judiciary is a power or an authority is still controversial.

The Lebanese judiciary as a power has the full right to enjoy the authority's prerogatives, i.e. to be fully independent, cooperate with the other two powers and not be subjected thereto.

Therefore, the common point between all the above mentioned drafts, despite the slight differences regarding the name and means of establishment of the commission, was the establishment of a higher and unified body to run the judiciary affairs, whether judicial, administrative or financial, and replace the existing bodies. This higher body shall be granted full authority to monitor administrative, judicial and financial bodies, whether commissions, courts, councils or committees. It shall be granted a full right to take administrative and financial decisions related to the judiciary power without any intervention from the executive power. Therefore, the power of the Minister of Justice and the Cabinet shall be annulled in this respect, with a few exceptions which do not reduce the Higher Body's full authority.

The reforms are also necessary in reducing the authority and jurisdiction of exceptional courts, such as the military courts, and limiting their jurisdiction to a minimum of pure military crimes. They also reexamine the religious and confessional courts' authorities in order to limit the religious judiciary to the regular courts that fall under the judicial power, becoming a part of it, in the event the full secular system was not adopted. Moreover, reforms call for totally depriving religious leaders of suing and annulling religious and confessional courts following the example of many Arab countries, such as Egypt and Tunisia.

The fact that the reforms drafts remain at the parliamentary commissions' level and are not examined by and submitted before the Parliament's general body to issue laws thereon consolidates the conviction that any judicial reform is inevitably related to a clear political will, not yet ripe. This was



concluded in common by all the judges, lawyers and politicians I individually interviewed prior to drafting this report as well as by all the dialogue sessions held¹⁰. Such radical reforms would deprive politicians of the power of intervention in the judiciary with the aim of using it at their own interests. Thus, reforms today are based on few technical and detailed issues which are still, as important as they might be, insufficient for the judiciary to become the power stipulated by the constitution and to be strengthened by this same constitution.

The true reforms to bring in the judiciary in order to achieve its awaited functions will be tackled in chapter four of this report.

¹⁰ These sessions occurred on the occasion of this report elaboration and drafting.



Chapter two: Analysis of the principles

1- The independence

1-1 Constitutional and Legal guarantees governing judicial affairs

1-1-1 Lebanese constitutional texts

The Lebanese constitution issued on May 23, 1926 stated in article 20 that “the judicial power is entrusted to the courts of all degrees and jurisdictions within a system stipulated by law and granting necessary guarantees for all judges and litigants.”

“The conditions and limitations of the judicial guarantee are stated by the law and the independent judges when exercising their functions, and verdicts are delivered in the name of the Lebanese people.”

It is worth noting that the Lebanese constitution did not include any detailed provisions on the judicial power as it did for both the legislative and executive powers, and left this task for the positive laws.

The other efficient constitutional guarantee was added when the constitution was amended after the Taëf Agreement, whereby article 19 of the constitution stipulated the establishment of the Constitutional Council to monitor the laws’ constitutionality. Based on this article, law number 250 dated 14th July, 1993 was issued, establishing the Constitutional Council, as well as law number 516, dated 6th June, 1996, establishing the said Council’s bylaws.

Establishing the Constitutional Council pursuant to a constitutional text gives a guarantee through the challenges to the laws undermining the judiciary’s independence; this was the case in one of the Council’s first decisions.

Last, the principle of the judiciary’s constitutional independence may be concluded in the text included in the constitution’s preamble added by virtue of the constitutional law number 18/90, stipulating that the power system in Lebanon is based on the separation, cooperation and balance of powers. Moreover, this principle was stated by paragraph two of article 66 of the Lebanese constitution.



1-1-1-1 The Lebanese Law texts

Article one of the Code of Civil Procedure stipulates that the judiciary power is independent from all the other powers in hearing and settling cases, and that its independence has no limits except within the constitution framework.

Article 44 of the Law of Judicial Courts stipulates that the judges are independent and therefore cannot be transferred or dismissed unless in conformity with the law.

Article 19 of the Law of the State Council stipulates that the Council's Office shall ensure good management of the judicial courts and safeguard their status and independence.

Article 419 of the Criminal Code stipulates that whoever solicits a judge, whether verbally or in written, in favor of one of the litigants shall be penalized by paying a fine.

These texts are practical confirmation of separate powers principle stipulated by the constitution.

1-1-1-2 International texts and conventions

Beside the constitution and some legal texts, Lebanon signed international conventions also in support of the judicial power's independence, among which:

- The Universal Declaration of Human Rights and the International Convention on Civil and Political Rights. Article ten of the Declaration and article fourteen of the Convention stipulated the necessity to ensure for every person a public and fair trial before a specialized and independent court to be established by virtue of a law. An independent judiciary is necessary to guarantee this right, while the Lebanese law abides by this text pursuant to article two of the Code of Civil Procedure stipulating the principle of succession of legal rules.
- The essential principles for the judiciary's independence adopted by the United Nations Conference held in Milan between 26th August, 1985 and 6th September, 1985.



- The Partnership Agreement between Lebanon and the European Union endorsed by law number 474 dated 12 December, 2002.

1-1-1-3 Violation of the principle of constitutional independence- Institution of exceptional courts

We mentioned above that the Lebanese constitution charged the positive laws with ensuring the guarantee of judicial autonomy. However, it did not explicitly state the method adopted to establish and organize this independence. The executive and legislative powers both exploited this flaw to establish many exceptional courts. Therefore, one can say that the Lebanese judiciary is typically the system of exceptional courts.

No law text prohibits the establishment of exceptional courts as it is the case in some European and even Arab constitutions, like the Yemenite constitution.

The most dangerous among these courts are the military courts, whose establishment derives from law. These courts have surprising powers, since they affect civilians in their ordinary relations with the military, in extra-military fields. A temporary law was issued in 1958 after the armed confrontations that occurred that same year, and it temporarily granted these courts large prerogatives. However, this temporary law of 1958 is still enforced, which goes against any judicial logic and against any justice. Other exceptional courts include religious and spiritual courts examining personal status cases. They undoubtedly violate the principle of independence stipulated in the constitution in all aspects as later mentioned in the present report.

On the other hand, exceptional and special judicial bodies are formed; they are represented by the commissions of appropriation, commissions of challenge to the taxes, as well as the special court for examining the cases of banks facing difficulties, the Judicial Council (courts)¹², the disciplinary Councils and other judicial commissions constituted for special functions, in exceptional circumstances. The existence of a large part thereof does not derive from the constitution but from the provisions of positive laws, and does not fall under the judicial power as stipulated in article 20 of the

¹² See 4-2-1-1-2 of the present report.



constitution. These bodies are more or less linked to the executive power in their establishment and functions.

Although the plurality of courts, applied in many European states, may have justifications, the exceptional courts with expanded jurisdictions and powers, contradict the principle of equality before the law, judicial power independence and unity, and monitoring and accountability activation, all subject to denial in case of plurality.

2-1-1 Limiting the judiciary appointments to the judicial power

Although Lebanon has signed the UN Declaration on the basic principles for the judicial power independence, in which articles 10, 12 and 13 stipulated in details the principles and criteria to be adopted in judicial appointments, these appointments, as well as individual and collective nominations and delegations, are made according to government decrees elaborated and approved by the Higher Judicial Council and submitted to the Minister of Justice¹³. The Minister of Defense replaces the Minister of Justice when it comes to military courts.

High judicial posts are still subjected to confessional allotment, be it appointments or delegations. In fact, the post of President of the Higher Judicial Council should be reserved to the Maronite community. This president is also president of the Court of Cassation. The same is applied for the Head of the State Council. The public prosecutor before the court of cassation belongs to the Sunnite community and the President of the Court of Audit is Shiite.

1-1-3 Harmony between judicial organization laws and legal procedures on one hand and constitutional guarantees for the judiciary's independence on the other hand

The first violation of the principle of independence lies in granting the executive power the right to appoint some members of the Higher Judicial Council (which lately triggered a crisis as later mentioned). Moreover, no unified law has been established for the judicial organization. Every type of

¹³ The issuance of appointments made by the Higher Judicial Council, by virtue of a decree, becomes compulsory without any amendments when approved by a majority of seven of the ten members of the Council, in case of disparities with the minister of justice.



courts has its own laws, and one can say that they all breach the principle of independence. Judicial courts are organized by virtue of legislative decree number 150 and dated 16th September, 1983.

Article 26 of this decree breaches the principle of independence since it invests the Cabinet with the appointment of the first presiding judge before the court of cassation, and therefore the appointment of the president of the Higher Judicial Council.

Furthermore, in breach of the principle of independence article 31 of this legislative decree stipulated that the appointment of the prosecutor before the court of cassation shall take place following the same above mentioned method, as well as articles 100 and 101 regarding the appointment of the head and members of the Judicial Investigation Body.

Article 5 of the State Council bylaws stipulated the appointment of the Council's president and the head of the Council's Bureau by virtue of decrees.

Legislative decree number 82 dated 16th September, 1983 governed the organization of the Court of Audit (the financial courts regarding the appointment of the president of the Court of Audit, the prosecutor and heads of chambers who are all appointed pursuant to decrees. This applies to military courts organized by virtue of law number 24/68 dated 13th April, 1998.

The same applies for the texts regarding the appointment of judges and delegations and nominations which limit the judiciary's independence, since they allow the executive power to intervene in the judicial life. This is deemed a breach of the principle of independence stipulated by article 20 of the constitution and the international conventions that Lebanon has signed.

At the level of the constitutional courts, granting the Cabinet the right to appoint half the members of this Council (while the other half is appointed by the Parliament in a general session) will force the appointees to heed the recommendations of those appointing them.

Last and not least, spiritual courts (Sunnite and Shiite) are extra-judiciary organized and follow the executive power principally (the premiership). The same applies for other religious courts (Christian and Jewish) which have no



civil reference, and breach all the constitutional texts especially that they rule in the name of the Lebanese people and do not follow the principles governing the judicial system in general.

As for the organization of the judicial commissions mentioned in paragraph 4-1-1-1, it violates the principle of independence since they fall totally under the scope of the executive power.

It is worth noting that, in view of the absence of a unified judicial system in Lebanon, different organizations included, against the constitutional texts and international principles of independence, main judicial groups from which derive the exceptional and the special courts. This was consolidated by article 84 of the Code of Civil procedure, which is typically unconstitutional, and stipulates the establishment of special courts to examine, exceptionally, some litigation according to their established laws and regulations.¹⁴

1-1-4 Respecting the constitutional guarantees for the judiciary's independence in practice

The major problem Lebanon's judiciary faced since ever is the fact that it is considered a public institution falling under the executive power, and not an independent power as stipulated by the constitution. Therefore, violating the principle of independence was recurrent, and the judiciary became subjected to the influence of the executive power and sometimes the legislative power.

Maybe the politicians' interventions in the judiciary are the main problem thereof. This intervention is explicitly tackled in the media. A statement by the Ministry of the Interior was published in the Newspapers on 2nd February, 2002, reading: "a flagrant intervention by the Prime Minister and the Minister of Justice who have no legal right to call the judge heading the Commission of Records¹⁵ or orient him in favor of any candidate... However, unfortunately, this occurred Sunday after midnight..."

¹⁴ As an example, we have the commissions of Appropriation, the Arbitral Council and the court of publications. In spite of justifications and advantages for establishment in terms of settlement and jurisdiction, they often follow a special code of procedures incompliant with the standards of justice as for the annulment of reconsideration and challenge or through the constitution of bodies with extra-judiciary persons, not submitted to the court of cassation supervision.

¹⁵ Parliamentary Commission of Records in the Metn by-elections



In addition, investing the appointments and nominations to the executive power in contrast with the principle of separation of powers and the independence of the judiciary pushed the executive power to interfere and directly influence the course of action of the judiciary and the judges. The judges even got used to such an intervention and often contributed thereto. All this led the judicial inspection to issue a circular published in Annahar newspaper on 11th December, 2005, calling some judges who refer to political figures for judicial appointments to cease this practice.

Some judges disapproved such an intervention and resigned as a sign of protest after long years of experience. Among them, we mention Walid Ghamra, Wael Tabbara, Manah Metri, Ussama el Ajouz. Some detailed their protest in the resignation letter such as Judge Ussama el Ajouz who wrote after twenty five years of experience in the judicial field:

“We were told when we first entered the judicial field that competence, knowledge and hard work are the only criteria for assessing and promoting judges. The truth is, however, much different. During my career, especially in the judicial appointments I witnessed, other considerations that everybody knows, prevailed always and foremost over the objective criteria in this country. Nothing seems to signal any change on the short or long term, and we even expect the opposite to occur...”

The content of Judge Ajouz’s resignation letter was later echoed by the eminent judges and politicians. The head of the Higher Judicial Council Mr. Nasri Lahoud stated after retiring (in Assafir newspaper on 14th November, 2002) that the judiciary’s independence in Lebanon is a mere illusion since the judiciary is just a tool in the hands of politicians who interfere therein.

The current Minister of Justice Mr. Khaled Kabbani, one of the most eminent former judges, declared in an article published in the Circular of the Banks’ Association in Lebanon, issue of June 2004, p .63, that the judicial appointments are the main tool in the hands of the executive power to interfere in the judiciary. The executive power exploits it to effectively pressure the judiciary and the judges, exclude whomever it wishes to exclude off certain posts or cases, and appoint whomever it finds suitable and responsive.

The Parliament triggered much criticism in one of its sessions when some of its deputies called “for lifting the hands of politicians and officials off the



judges and the judiciary.” I quoted this say from MP Boutros Harb in the Annahar newspaper, dated 10th February, 2002. The late Premier Rafik Hariri had declared to Annahar on 5th February, 2002 “to say that the judiciary in Lebanon is loose is wrong. However, to say that the Judiciary is totally sound and honest is a sin because this does not reflect the reality, many errors and violations are committed.” He also acknowledged that political interference occurs in the judiciary.

MP Walid Jumblatt stated in a TV interview a dangerous declaration, saying “I interfered, I am interfering and I will interfere in the judiciary because this is the situation in the country.” On 29th January, 2002, in Annahar newspaper, he said “the judiciary in Lebanon is for the wealthy and powerful and not for the poor. The judiciary works according to the judge’s mood...” “Most of the judges have a local and non local security reference, and Intelligence officers call them... this is the reality of the judiciary.”

The Maronite prelates’ Council did not overlook this matter. In a communiqué published in Addiyar newspaper on 5th September, 2002, it declared “The Judiciary lost the citizens’ trust and became politically guided and selective... Truth became falsehood and falsehood became truth too often... We are sorry to say that justice is exploited to serve the interests of influential politicians.”

If this was the situation prevailing a few years ago and before the political changes in Lebanon, it has not much improved practically afterwards. Proof enough, the Judicial Inspection Body had to issue the above mentioned warning for judges to cease calling the politicians regarding the appointments.

Maybe the most flagrant crisis proving the continuous violation of the judiciary’s autonomy is the crisis that started on 11th November, 2005 regarding the appointment of some judges to the Higher Judicial Council. In fact, the mandate of five judges had come to an end, and the dispute was tense among the executive power officials on appointing the replacing judges. Therefore, the Council was paralyzed, and the judiciary underwent a dangerous situation that was never seen before, because judicial appointments were suspended, as well as the appointment of 28 new judges in the cadres of the judicial department, the appointment of judges to posts that were vacant due to retirement, entrance exams to the Institute of Law, or the appointment of judicial investigators to investigate crimes referred to the



Judicial Council (like the murder of late journalist Gebrane Tueni). All these issues await the political consensus of the executive power figures, which seems now impossible.

Consequently, the Bar Association of Beirut and Tripoli called to a symbolic protest on Monday 15th May, 2005.

1-2 Institutional Judiciary independence

The Institutional independence of the Judiciary means more generally the judiciary's autonomy as a power and apparatus. Considering the judiciary as a power implies dealing with it as a power, just like the executive and legislative powers, and not just as a function fulfilled by the courts. This also entails its financial and administrative independence towards the other two powers. Thus, the judiciary's budget is a separate figure in the State budget, and the judicial administration is an autonomous administration entrusted to the Higher Judicial Council.

1-2-1 Financial Independence

1-2-1-1 Budgetary autonomy

However, the reality is much different in Lebanon, because the Judiciary's budget is a part of the budget of the Ministry of Justice, controlled by the Ministry's financial comptroller. In parallel, the State Council was the only court that was able, under the mandate of one of its presidents (Dr. Antoine Baroud) to reach partial financial independence when a special comptroller was appointed thereto. Although a clear cadre for judges determines their salaries, revenues and means of financial gradation, the Judiciary's budget clauses fall under the Ministry of Justice¹⁶.

1-2-1-2 Adequate resources

The judiciary's budget resources stem partially from the fees of the judicial proceedings and the courts' revenues. The surprising thing is that these revenues feed the State's public budget since they represent considerable

¹⁶ The Ministry of Justice Budgets of the three latest years enclosed to the present report.



amounts, in contrary to the principle of the free justice as later mentioned. The judiciary's budget, a part of the budget of the Ministry of the Justice, is relatively modest, despite this judicial department's large revenues as we mentioned above. Therefore, these revenues do not match the Judiciary's financial needs to develop, equip and modernize the law courts, especially in the regions, or the need to improve the judges' revenues as later mentioned.

1-2-2 Administrative autonomy

As for the appointments, nominations and promotion, we find it necessary to reiterate what was mentioned in articles 1-1-2, 1-1-3 and 1-1-4.

On the other hand, the judiciary has no power as to financially managing the judicial institution and services, i.e. the courts of law, their location and the equipment therein. All these administrative issues are carried out by the Ministry of Justice and go beyond the power of the Higher Judicial Council or the judges competence. Administrative and logistic affairs are managed by the executive power which decides expenditure, maintenance, equipment, building, furniture, libraries and tools requisite for work execution. It would have been better to affiliate such functions to the judicial authority which is more acquainted with needs and requirements.

1-3 Personal independence

1-3-1 Ensuring Economical and Physical safety for judges

1-3-1-1 Ensuring physical safety

During and after the Civil war, and due to the prevailing political and security situation in Lebanon, Judges, especially the courageous ones, underwent impending dangers that sometimes threatened their own lives, like what occurred on 28th December, 2005, and for the third time in a row, with Judge Nazem Khoury¹⁷ who was examining the AL Madina Bank file. Before that, one of the judges was shot in his office in the courts of law in Beirut, and miraculously survived his injuries. The killing of four judges in Saida while in court, whereas their killers are still on the loose, remains the most flagrant example of the dangers the Judges face. This affected the Lebanese judiciary morally, and this power was later considered as

¹⁷ For more details, see the introduction, article 3, footnote 8



incapable of and afraid from examining and facing dangerous crimes and affairs, and was later substituted by the international judiciary. However, one ought to mention that the international judiciary is an exceptional and non permanent judiciary. Therefore, the judges' security must be improved, especially if they deal with delicate and serious affairs exposing their life to danger. This security is currently not ensured outside the courts of law and their locations. We can also say it is not ensured even within the courts, since a defendant was shot and killed after stepping out of the court by one of the plaintiff's cousins in 2005.

1-3-1-2 Ensuring economical safety

No doubt that ensuring sufficient revenue for the judge is essential to uphold his autonomy. Although the judges' current financial situation is deemed acceptable, it is not considered high enough for the judges to achieve his functions with no feeling of unfairness, or financial insecurity sometimes.

Currently, some parties mention reducing the judges' social benefits, instead of increasing them, by lowering the state's contribution to the Judges Fund for Mutual Aid, thus threatening the judges' autonomy in their daily lives. This is not acceptable because the judges' autonomy cannot be assessed based only on the political power or social situation, but rather on the financial needs or other requirements whatsoever. Another part of this report examines the judges' financial situation.

1-3-2 Prohibiting internal and external interference and meddling in the judicial decisions

We mentioned above that article 419 of the Criminal Code incriminates whomever appeals to a judge whether verbally or in written in favor of any litigant.

The International Commission of Jurists adopted, in 1981, a definition for the independent judiciary stating that every judge has to enjoy the freedom of assessing the cases he is appointed to according to his assessment of the facts and his understanding of the law, without any inconvenient interference, intimidation, or direct or indirect pressure from any party for any reason whatsoever.

Lebanon takes part in the commission and approves its resolutions. Besides managing the judiciary financially and administratively by the executive



power, the latter was granted through the minister of Justice, the power of reviving the public prosecution which implies influencing it directly. The President of the Republic was also granted the power of issuing special amnesty annulling therefore the effects of the judicial verdict.

The external intervention is represented, as we have seen above, in the most flagrant way possible in the intervention of the executive power in the judges' work, and its attempts to affect their verdicts orienting them in specific directions. The examples we mentioned in paragraph 1-1-4 entitled "respecting the constitutional guarantees for the judiciary's independence in practice and exercise" showcase this issue.

Some judges were professionally sanctioned for delivering certain verdicts and refusing the politician influence over the judiciary¹⁸, giving the example of one prominent judge with high experience who was examining cases of misdemeanors and contraventions. While occupying this post, he was entrusted with many cases regarding members of a certain political movement. He determined this movement is legal and its members have all the right to express themselves. He also examined the case of Iraqi Dinars in the possession of one of the defendants who is a cousin of an opposition political figure, and so he declared him innocent. These two verdicts exasperated some influential officials then; Instead of being righteously promoted, Judge Khamis remained in his rank and his jurisdictions were limited to contraventions and car contracts.

This also happened to the Judge of Urgent Matters in Metn¹⁹ who examined cases regarding a municipality under the influence of a certain authority. He was later transferred and another judge was appointed to urgent matters in Metn in his place.

External meddling is not limited to the executive power, but sometimes stems from the legislative power also which issues sometimes laws limiting the judge's independence and freedom to deliver verdicts. The same occurred when article 459 of the Criminal Code was amended to annul the attenuation grounds in premeditated murder. Therefore, the judge became bound to apply the death penalty in contrary to his conviction, which led to the abstention of some judges from delivering verdicts that go against their

¹⁸ The penal district judge in Beirut, Fawzi Khamis.

¹⁹ Judge Mohammad Wissam Mortada.



consciousness and convictions. More recently, a law was issued in the Parliament to amend article 68 of the Law of Parliament election, under which the judicial verdict stating the closure of the MTV television as well as Mount Lebanon radio became null and void. Although the closure of those two stations was unjust and the legal measures were not respected when pronouncing the verdict, the situation could have been rectified by other means which do not meddle in the judicial power verdicts.

Often, religious, confessional and tribal factors affect the verdicts of some judges who do not have personal immunity against this kind of influence. The internal influence is mostly represented by the influence of the high ranking and senior judges over the lower ranking ones in the latter's verdicts, just as it is the case with the political influence.

Former Minister of Justice, the late Khatchik Babikian, used to say to his lawyer colleagues: “You will not believe that anybody can affect a judge's decision as much as a colleague judge.”

A current judge echoed his say when bitterly stating: “they know you are not affected by any politician's meddling, so they send you colleagues of yours to influence cases you are entrusted with.”

1-3-3 Relative immunity against civil and criminal prosecution

When practicing their judicial functions, judges enjoy relative immunity against criminal and civil prosecution.

1-3-3-1 Criminal Liability

In the event a judge committed a crime when exercising his functions as a judge such as bribery while not in function, he shall be prosecuted before criminal courts just like any other citizen. This prosecution depends on the issuing of an authorization thereto according to certain procedures. The prosecution shall take place properly before the general body or the criminal chamber in the Court of Cassation, according to the judge's degree (article 44 of the law of judicial courts).

1-3-3-2 Civil liability



In this regard, distinction must be made between criminal courts and other judicial bodies. Article 741 and the following articles of the Code of Civil procedure stipulated the cases of liability regarding the actions of the judicial courts. The Legal action for holding judges accountable as to their performance shall be taken before the general body of the Court of Cassation, not against the judges, but rather against the Lebanese state which has the sole right of review against the judge to collect the indemnities it is bound to pay, which means that the law separated between the litigants and the judge.

The only exception in this rule is the cases in which the state is the party directly prejudiced by the judge's actions, the cases that may be prosecuted, i.e. the abstention from enforcing justice, deception and fraud, bribery and serious error or any other cases stipulated by law regarding the responsibility of the prosecution which did not abide by the due rules for arrest warrants, notifications and subpoenas.

The judges' all actions shall respect the above mentioned rules, whether judges are charged with settling or investigating cases or with public prosecution, including all civil or criminal courts.

Regarding the administrative courts, no similar system allows prosecuting judges or the state for accountability towards their actions. Nevertheless the state responsibility for the administrative judge' fault is based on the theory of serious vocational error, and the lawsuit is instituted before the administrative judiciary. No case of this nature was ever brought before the court. Consequently, it is indispensable to draft clear texts in this regard, especially that these courts have only one degree of prosecution, and therefore any mistake committed by any of these courts' judges, whether simple or serious, cannot be rectified. In the absence of law texts, immunity may become absolute without any restriction.

In the system of confessional courts, a distinction is made between spiritual courts²⁰, which remain, even theoretically, liable of their actions on the confessional level, and the religious and confessional courts²¹, the actions and liability of which are assumed by the state. Practically, no texts or

²⁰ Relative to the Christian and Israeli communities.

²¹ Relative to the Islamic communities (Sunnite, Shiite, Druze, Alaoui).



customs determine the liability and immunity of these courts' judges, and their immunity which seems absolute in the absence of law texts.

1-3-4 Adequate salaries

An incumbent judge is paid a monthly salary that barely exceeds one thousand US dollars when being appointed to the first degrees. He shall receive a one degree promotion of 22 US dollars every two years, and continue receiving promotions until the twenty second degree. His financial promotion shall be paid even if he becomes a higher judge, when his salary will equal 3000 US dollars approximately.

A married judge shall also receive a family indemnity for his wife and kids. If a judge's monthly salary is relatively low in comparison with Lebanon's actual high standard of living, other factors shall be added to this salary for it to become fair.

Among the additional revenues, we mention the revenues from the Judges' Fund for Mutual Aid, established pursuant to decision number 66/1/L dated 4 March, 1982, issued by the Minister of Housing and Cooperatives, and organized by legislative decree number 52 dated 29 July, 1983. This Fund is alimented by the judges' subscriptions, the contributions from the budget of the Ministry of Justice, the fees paid for the cases before the courts, other fees paid in the formalities of the commercial register, at the rate of 30 per cent of the traffic fines collected according to judicial verdicts and other resources, donations, etc...

Some judges receive additional monthly indemnities in counterpart of their membership in the Judicial Council (decree number 7715, dated 23rd December, 1995), or specialization indemnities (article 15 of law number 19/68 dated 7th February, 1968). This indemnity reaches 50 per cent of the salary. This law was annulled in 1998 with the issuance of the new series of salaries.

Some judges appointed outside Beirut receive additions to their salaries that range from 7 to 15 per cent according to the court's distance from the capital.

The judges who are members or delegates to judicial commissions receive special indemnities that we do not deem necessary to detail.



With all these revenues, the judges' salaries are considered fair in comparison with the salaries of other public servants who do not receive additional indemnities but only slight health guarantees and negligible school allocations.

Consequently the judges' revenues exceed almost all other administrative sectors incomes with a proportion that may reach sometimes the 50%.

1-4 Freedom of expression and association

1-4-1 Freedom of Expression

No text prohibits or limits the judge's freedom of expression except the secret of deliberation he abides by. This was stated by the head of the State Council in the discussion session he took part in and which is enclosed to the present report.

Nevertheless, the judiciary law stipulates that the employees' law is applied on judges as regards all issues contradicting the judges' statute. Article 15 of the employees' law prohibits the employee to "make or publish statements, articles, declarations or publications in all issues without a written authorization from the competent president". This text disagrees of course with article 13 of the Constitution stipulating the freedom of expression.

The head of the State Council clarified in the said interview that the freedom of expression must include religious freedom, freedom of assembly and political freedom. He also supported the freedom of expression in writing and in the press, while opposing the principle of reserve limiting the powers of the judge. He called for establishing specific criteria to follow in order to abolish any prohibition impeding the judge from expressing himself sometimes. He considered that the principle of reserve must be limited to the verdicts, which means that the judge is entitled to express his views and personal convictions in all social domains. Nothing could restrict this freedom other than his judicial file on the data of which his convictions are based.

Some judges who participated in the in-depth dialogue session held in the Ministry of Justice on 14th July, 2005 echoed him when they considered the



freedom of expression as a pillar for the judiciary's independence. (The discussion is enclosed to the present report).

This was also confirmed by MP Boutros Harb in the discussion meeting he took part in and which is also enclosed to the present report.

In fact, the judges in Lebanon are part of the Lebanese society enjoying a large freedom of expression that may sometimes be extremely exploited as we have seen above when stating the harsh criticism of some jurists to the state of the judiciary and in the newspapers.

1-4-2 Freedom of association

This principle is applied in some countries like France and other Western states. The judges have the right to take part in political parties, or establish labor unions with political orientations etc... It is also endorsed, in another way in Egypt through the Gathering (Cluster) of the Judges' Association.

The UN General Assembly stated in Resolution number 40/32 dated 29th November, 1985 the principle of allowing the judges to establish associations or unions representing their interests in order to enhance the Judiciary's independence (articles 8 and 9 of the UN Declaration on the Judiciary's independence). However, the situation might be different in Lebanon. The constitution considered the judiciary as a power just like the executive and legislative powers, in contrast with France where the debate was raised on determining whether the judiciary is an independent or public power.

Thus, many deem that considering the judiciary as a power goes against the possibility of establishing a Judiciary syndicate.

In parallel, this issue is not currently raised since the law does not allow the servants to participate in political parties or establish labor unions. However, it does not prohibit other types of assembly such as associations, clubs dealing with the concerned parties' personal affairs, i.e. the judges.

When this issue was mentioned to the judges, they rejected it. The stance of Dr. Ghaleb Ghanem, head of the State Council was clear thereon. He vetoed the principle of participation to parties and syndicates and considered that it is not a fundamental principle in view of the large divisions within the



Lebanese society. He deemed it hard to imagine a judge with a certain affiliation (whether religious, political or philosophical) while conserving the people's trust in his professional performance. This was also echoed by MP Boutros Harb in the above mentioned interview.

1-5 Security of tenure

1-5-1 Retirement age

Since the Judges in Lebanon are appointed and not elected, they abide by their profession's system. Therefore, a judge's retirement age is set by law to the age of sixty eight.

Only the judges of the Constitutional Council are an exception, since they can be appointed at a higher age. They are usually retired judges, lawyers or jurists who are seniors and well experienced.

1-5-2 System of Promotion

The UN declaration on the fundamental principles of the Judiciary's independence, particularly in article 13, determined some objective criteria of competence, integrity and experience as a basis for the system of promotion of judges.

A promotion in general is the promotion of the degree according to the judicial cadre. The judge is promoted to a higher degree duly every two years and receives a raise in salary, regardless of his competence.

A promotion also implies granting the judge an important judicial post as a reward for his integrity, experience and competence. This is not based on a defined system in Lebanon, but is rather subjected to administrative and political moody decisions, especially that appointments to the higher posts are carried out pursuant to a decree as we mentioned above.

During the in-depth discussion session held with the judges, one of the participating judges complained he was still heading an arbitration Council despite his competence and long expertise, while other judges who are less competent and experienced than him became presiding judges of appeal



thanks to political support (his complaint is not documented). Sometimes, judges are not promoted as a punishment for verdicts they delivered against the interests of concerned politicians, as in the case of the two above mentioned judges in paragraph 1-3-2 of the present report.

The judges' appointment and transfer follow the same rules as their promotion

1-5-2-1 Appointing judges on the basis of objective rules

Appointing judges in Lebanon follows the same rules as the countries adopting the German Roman system (the system of civil law). The judge joins the Law Institute after passing an entrance exam. His adherence follows objective and other personal rules. Objective rules include educational competence, for example the candidate must hold a BA in Lebanese Law, master good Arabic language and French or English language, be under thirty five years old, not be convicted of a misdemeanor or crime, have good conduct, be free of any disabilities or infectious diseases²².

The personal rules have to do with the candidate's family and personal status. These auto-criteria are related to the candidate's social environment and strong personality. They are determined through special methods and during the personal interview. Discretion is possible in this regard and is often adopted.

The judge is appointed as an authentic judge after completing three year studies in the Institute and successfully passing the test. This is an objective criteria followed by all apprentice students.

Sometimes, a judge is appointed among lawyers. Lawyers must also pass an entrance exam and have the required skills as stated by the objective and personal criteria.

1-5-3 System of transfer

²² The text does not clearly indicate the sort of diseases but takes into consideration the candidate's physical and psychological health, such as good senses, being able-bodied, suffering from no contagious diseases, and being mentally sound.



Judges in Lebanon are transferred to courts and departments. These transfers occur at the beginning of each judicial year, and follow the rotation system every two years.

No determined criteria are set for transfers, which are rather subjected to the discretion of the Higher Judicial Council and the executive power which is an effective tool of pressure and influence over the judges, as it is often the case. Some judges remain in their posts in remote regions for years for no obvious reason other than the fact that no one supports their transfer to higher or more adequate posts. Examples are many in this regard, but we will not mention them to preserve the interest of the judges.

1-5-4 Prohibiting the assignment of judges to non judicial or legal tasks

According to article 44 of the legislative decree number 150/83 (law of organization of the Judicial Courts) judges are independent in their functions. They shall not be transferred or dismissed from the judiciary unless by virtue of the law.

Article 47 of the same decree prohibits the judge from working as a civil servant or from having a remunerated job while occupying his post as a judge. However, the judge has the right to teach at universities and Institutes of Higher Education after receiving a permit thereto from the Minister of Justice in the case of judiciary judges, and a permit from the presidents in the case of the judges of the State Council and the Court of Audit. The permit shall be issued every year, and the teaching hours shall not exceed 125 hours per year.

However, article 48 of legislative decree number 150/83, and articles 16 and 17 of the decree n° 10434 dated June 14th 1975 of the State Council System allow the judge's transfer, with his approval, to a public administration or institution. This happens often when judges are appointed to administrative posts, for example they are appointed governors as it is the case with the Bekaa governor, or they are appointed to a post at the executive power, as it is the case with the actual Cabinet's secretary general who is a judge before the State Council. In this case, the appointed post is not related to direct legal functions.

In many cases, Judges are appointed ministers, and their judicial posts are preserved, although this is very strange. Some judges were appointed Energy



Ministers and often Justice Ministers. Appointing judges as Justice Ministers is the most dangerous phenomenon, since they become in charge of managing the judiciary financially and administratively, and exercise their influence over the public prosecutions before returning to their judicial posts.

1-5-5 System of Discipline

A judge's violation of his duties or committing any act damaging the honor, the dignity or the morals is punished by disciplinary measures. In Lebanon, an integrated system is set for discipline and will be developed in section 3 of the present chapter regarding the competence of judges. The disciplinary system is integral and objective granting the judge the right to self-defense while reducing to the maximum arbitrary behaviors.²³

2- Integrity

2-1 Institutional Integrity

2-1-1 Clear and effective jurisdiction of courts

The principles of in presence and publicness of prosecutions is confirmed in article 7 of the constitution, stipulating the necessity of ensuring equality before the courts while respecting the full civil rights. These principles are also confirmed in the Universal Declaration on Human Rights in articles 10 and 12. Lebanon is one of the states which drafted this declaration since his representative Dr. Charles Malek was a member to the three member commission entrusted with drafting it. This article also stipulated that the judicial work be exercised in integrity.

Lebanon signed the International Covenant on Civil and Political Rights which confirmed the just lawsuit in article 19 and added a condition among others stipulating that all judicial prosecutions consist of two degrees.

In practice, distinction must be made between ordinary and exceptional courts.

²³ For more details, see section 3-4 below.



2-1-1-1 Ordinary Courts

The powers entrusted to ordinary courts falling under the judicial, civil and criminal judiciary are clearly set in the Code of Civil Procedure and the Code of Criminal Procedure. These two laws govern the fundamental principles for a prosecution's justice, i.e. transparency, challengeability of verdicts, possibility of reference, liability for judicial acts, administrative monitoring and accountability for the judges' actions, and easiness of referring to courts.

Transparency is reflected in the principle of justification of verdicts, thus allowing higher courts to monitor the rightness of verdicts. Violating the principle of justification means violating the public system and is a reason behind annulling the verdict²⁴.

Judicial courts implementing the Code of Criminal procedure respect, in general, the presumption of innocence expressly stipulated in the new Code of Procedure.

Publicness was stipulated in article 484 of the Code of Civil procedure but does not cover some investigation measures in some personal and family cases.

It is worth noting in this regard that the investigation measures which are secret are the judicial measures that raise the citizens' suspicions the most, especially if they take a long time. Therefore, the media sometimes fabricate facts or report the information of non reliable sources. The same occurred in the case of the child Nathalie Debbas, published in Annahar newspaper, supplement on people's rights, dated 11th February, 1998. In this case, rumors surrounded the cause of her death and thus confused the public opinion and offended people who, as it was proved later on, had nothing to do with the cause of death. The accusation was made without following the course of investigation.

²⁴ The non-justification is a reason for challenging verdicts before the court of cassation and re-trial before the State Council or for challenging decisions rendered by administrative bodies which have a judicial aspect. (article 117 of the State Council status)



Last, we ought to mention that the Lebanese law allows delivering different opinions in the event the court's body was split as to the legal resolution of the case, whether civil, criminal or administrative.

2-1-1-2 Special and extraordinary Courts

Many principles of a fair trial are not applied to the special and extraordinary courts which therefore go against the principals stated in the constitution or the above mentioned international conventions that Lebanon has signed.

2-1-1-2-1 Violating the principle of transparency

Extraordinary courts, like military courts, do not apply the principle of justification of verdicts allowing a higher court to monitor them. These courts deliver their verdicts as answers to questions. For example, the decision number 192, issued on 19th May, 1995, and published in Annahar newspaper, supplement of Human Rights, dated 14th January, 1998, reading: "Whereas the military court is not bound to justify or demonstrate the proof of incrimination, it is sufficient for it to answer the questions asked, it has the right to discrete, in view of its right to assume, that there exists enough proof to convince it of the incrimination of some defendants, or to clear others. The Higher court has no monitoring power over this assumption."

Besides, many large powers are granted to the military court by virtue of article 4 of its code of organization and jurisdiction stated by law number 24/68, dated 13th April, 1968. These powers are applied to any civil citizen in his dealing with any military court in ordinary crimes.

2-1-1-2-2 Breaching the principle of a prosecution's different degrees

We mentioned above that the possibility of reviewing verdicts is one of the most important principles to monitor the judicial performance and hold it accountable. However, some special courts, such as the administrative courts represented by the State Council, the Constitutional Council and the Judicial Council, deliver their verdicts in one degree and conclusively. This is very most dangerous because, in many cases, one of the governing bodies is charged with studying the cases while the others listen to his report. Therefore, the verdict is effectively delivered by one person who can make a mistake sometimes with no possibility of rectification in any way



whatsoever. This same mistake can sometimes cause the execution of an innocent.

2-1-1-2-3 Breaching the principle of publicness

Besides breaching the principle of the plurality of degrees in prosecution and the possibility of challenging the verdict, the State Council and the Constitutional Council do not apply the principle of publicness, but rather deliver their verdicts by hearing the parties only through pleadings.

2-1-1-2-4 Executive power's control of the Judicial Council's jurisdiction

The Judicial Council is an extraordinary court that examines crimes against the state security. It consists of five higher-leveled judges and the public prosecutor before the Court of Cassation as a public prosecutor before it.

The lawsuits examined by the Judicial Council are the ones submitted by virtue of a decision taken by the executive power. The Judicial Council cannot take the initiative, and its prosecutor shall not take legal actions on his own initiative unless the case is submitted thereto pursuant to a decision of the executive power. This decision is absolute and discrete and left to this power's assessment.

Last year, many political crimes were committed in Lebanon since the slaying of late Premier Rafic Hariri, Bassel Fleihan, journalist Samir Kassir and George Hawi. Moreover, a blast almost killed minister Elias Murr and journalist May Chidiac and took the life of journalist Gebrane Tueni.

Beside these crimes, other explosions occurred in different Lebanese regions causing much destruction and death; they were seemingly related and targeted the nation's civil peace and stability. Only the crime against journalist Gebrane Tueni was referred to the Judicial Council while the other crimes were not, although they all have the same context as previously said.

2-1-1-2-5 Religious and spiritual courts breaching the principle of natural judge and national judge, the principle of equality before the



law, the principles of courts' gradation and the principle of natural sovereignty

Sunnite, Shiite and Druze Religious Courts

Although the judges and staff in these courts are considered official staff to be appointed by republican decrees, these courts do not deliver their verdicts in the name of the Lebanese people, in contrary to the text of article 20 of the constitution. These courts apply positive laws only partially, since their verdicts and procedure are based on special legislative principles and are not a part of the Lebanese legislation. Moreover, judges in these courts do not meet the conditions required for appointment following the positive law, as mentioned in paragraph 1-5-2-1.

These courts do not particularly abide by the rules of international law, although article 2 of the Code of Civil Procedure stipulated its respect and primacy over the texts of internal law. In this respect, these courts recognize the verdicts issued by legislative references outside the Lebanese territories and references in countries which do not recognize the authority of legislative bodies or courts and apply the civil law, such as the decisions taken by the religious references in France for example, where the French state does not recognize any power or decisions thereof. Thus, these courts go beyond the interstate relations to forge ties with parties not recognized in their own state.

These courts do not apply the principle of equality before the law since they differentiate between men and women, between the individuals affiliated to their confessions and the ones of other confessions, and other practices that breach the Lebanese constitution and international conventions.

Christians and Jews Spiritual courts

What applies to religious courts applies also to these spiritual courts, while adding the following:

These courts' judges are not appointed by the Lebanese authorities, but by their special religious references; they do not abide by the state's authority or monitoring, often lack the objective competence, and do not meet the conditions of appointment followed by the judiciary.



In some cases, some of these judges are non Lebanese in contrary to article 12 of the constitution.

Although these courts' degrees are multiple, their higher reference to review the verdict is most often outside the Lebanese territory, either in Damascus, or in Cairo, or in Rome, thus hindering the challenge to the verdict, and making it either very costly or impossible to meet in the majority of the cases.

These verdicts delivered beyond the Lebanese sovereignty are implemented in Lebanon by the Lebanese judicial authorities as if they were delivered within the Lebanese territories, against all the principles of independence and sovereignty. It is surprising that the law issued on 2nd April, 1951, on setting the authorities of the confessional references of the Christian and Jewish confessions described these references, including special spiritual courts, as a “power”, as if they were public powers outside the scope of the constitution, equaling the Lebanese national authority in contrary to all legal and constitutional principles.

The blatant example reflecting how these references enjoy the status of the public authorities outside the scope of the constitution is the article published in issue number 50 of the official gazette in 2003. The new code of civil status for the Greek Orthodox confession was issued and signed by the confession's patriarch and not by any other religious or constitutional reference, in contrary to the mechanism organizing the issuing and publishing of laws, and stipulating they be voted in the Parliament and published by the signature of the President of the Republic.

Quasi judicial courts

Finally, we mention the arbitration councils specialized in examining labor cases. These councils consist of a judge and members not belonging to the judiciary, such as a workers' representative, and an employers' representative. Their verdicts are delivered in the name of the Lebanese people, following the rules of the Code of civil procedure. However, their verdicts are not subject to appeal, but only to cassation. Therefore, no monitoring is exercised by a higher court over the facts submitted in this council's verdicts, since the court of cassation is specialized in reviewing the violation of law and not in reviewing the facts.



2-1-2 Specific and mandatory laws and regulations to fight corruption

In Lebanon, a law was issued to fight corruption, holding number 154 and issued on 27th December, 1999. It is known as the Code on illegitimate Enrichment. This law replaced a former similar law issued in the fifties. However, the two laws were rarely clearly and truly applied, unless in relative cases and often selectively.

Many reasons are behind the fact that this law is not well applied, among which the fines, and compensations given for the defendant as an indemnity for prosecuting him, knowing that all these indemnities are very costly. Among the causes lie the immunities granted to the public servants, judges and other parties concerned with applying this law, and also the absence of a law allowing the access to information to gather proof.^{25 26}

2-1-3 Code of ethics

No law is currently enforced in Lebanon regarding judicial ethics, although a charter for judicial ethics was, drafted by a commission formed by the Minister of Justice and adopted by the judges themselves after mutual consultations, through the Higher Judicial Council, and the State Council, in 2002. This charter was and notified to the judges by virtue of the Minister of Justice' letter delivered on January 25, 2005.

This charter defines the judges' ethical conduct and vocational and social behaviors, constituting a special commitment among judges. It does not reach the level of law, thus any contravention of its provisions is not convicted or submitted to disciplinary measures. This Charter's influence isn't yet well defined.

Moreover, the Higher Judicial Council, the Judicial Inspection Body and the State Council's office sometimes issue circulars and guidelines for judges to respect judicial ethics and morals, such as abstaining from attending public

²⁵ It is to be noted that a consensus was reached about the existence of corruption in some judicial sectors, mainly in the criminal judiciary. This was clearly reflected in the referendum carried out on judges and attached to this report.

²⁶ It is worth to mention the existence of a draft law entitled: "Fight corruption" elaborated by the Office of the Minister of Environment for Administrative Affairs. The Lebanese Government is still studying the probability of adhesion to the International Convention against Corruption, for imposition of amendments on Lebanese Legislations. See also the article of judge Khalil Abou Rjeili in the judicial magazine n° 18 entitled : "Les tentations de Réforme en Droit libanais en matière de lutte contre la Corruption".



and political events, avoiding social events, decent clothing, avoiding statements, abiding by the rules of transparency, and other duties regarding serious judicial work.

These circulars are confidential and are submitted to the judge in person in sealed envelopes.

In 1994, then Lebanese Minister of Justice Dr. Bahij Tabbara had talks with the members of the Higher Judicial Council and the head of the Judicial Inspection Body to draft an agenda for the judicial ethics and morals influenced by the Lebanese, Arabic and international facts. The conference held by the heads of the Arab Judicial Inspection Bodies in February 2004 adopted a recommendation upon the request of the Lebanese Minister of Justice to draft an Arab charter for judicial ethics. This charter was born last year, circulated in different Arab countries, run pursuant to all above mentioned provisions of the Lebanese Charter of Judicial Ethics²⁷

In reality, many judges do not take into consideration the judicial ethics, yet perform fully opposite acts. Examples thereon are many.

2-2 Personal Integrity

2-2-1 Impartiality in decision-making, including respect for Principle of Equality

The judge's neutrality ensures equality between the litigants, and implies the judge's personal neutrality and impartiality and his neutrality towards the course of the case.

Personal impartiality

It implies that the judge be impartial towards all the litigants, without having a preconceived opinion thereon. He shall also abandon any religious, racial, political, tribal, familial or regional discrimination.

Lebanese judges are called to settle cases between litigants of different confessions, races, and sexes, and between Lebanese and non Lebanese.

²⁷ The charter was not published but the text is available in an Arab judicial inspection body.



Here lies the difficulty that must be faced with proper rehabilitation and training in the judicial institute. Precise criteria must be previously set to choose candidates among the applicants having personal and social skills that allow them to overcome all confessional, tribal or racist affiliations, clear to all who truly know the Lebanese society.²⁸

Moreover, the principle of impartiality is sometimes legally excluded in confessional and military courts as well as arbitration courts organized by labor syndicates, just like the (quasi compulsory) courts organized by the Association of Architects to examine engineering contracts.

Among the most important legal guarantees to implement impartiality are the legal texts regarding the non conflict of interests as mentioned later, and the texts on referring the cases due to suspicions, adopting the principle of plurality of the court's judges, and choosing it over the system of the district judges, whereby impartiality is easier in practice, and interventions and mediations are more difficult.

However, this last point is only partially implemented in the courts of first instance as a solution for judicial crises.

The judge's impartiality regarding the course of the case

This principle is sometimes called pertinence in civil cases, and other times the right to defense in legal prosecutions. It implies calling the litigants duly to attend, sending them papers and documents, allowing them to practice their right to reply and review the documents, and giving them sufficient time thereto.

This principle also implies the judge's abstention from delivering the verdict if it is not related to the case, or his reference to legal grounds that were not discussed by the litigants, or to real grounds he was informed of from outside the case.

All these principles are stipulated in the Codes of civil and criminal procedure enforced in Lebanon.

²⁸ There is no actual special training for judges at the Institute. Moreover, the admission at the institute takes only into account, in such matters the confessional equilibrium.



However, this principle is not strictly applied. In some cases, the right to defense is not applied in some disciplinary prosecutions. Moreover, the principle stipulating granting the defendant in a criminal case the right to self defense requires allowing him to call on a lawyer to keep his secrets and act as a mediator between him and the judge. This reflects the importance of the lawyer’s “trade secret”. Breaching this principle is very dangerous, as it was the case when Dr. Samir Geagea’s lawyer was prohibited from meeting his client in private when the latter was arrested.

Moreover, the lack of neutrality (impartiality) and the breach of the principle of equality by one of the highest judicial bodies in Lebanon, i.e. the Judicial Council, were showcased when this Council abstained from taking a decision regarding the incarceration of Dr. Samir Geagea in the Ministry of Defense which was not yet authorized as a prison, while awaiting the endorsement of a special law thereto, when the Council should have taken the decision of transferring him to a legally organized public prison.

Last, we reiterate what we mentioned elsewhere in this report, when discussing the impartiality and integrity, mainly in section 2-1-1 and sub-sections regarding the criticism of the first phases of the inquiry before the Judicial Police, whereby lawyers are not allowed to attend the interrogation, under no legal text, or under the provisions followed in military courts allowing the assignment of a lawyer among the military officers, or the right granted to the officer heading the court allowing him to take a decision banning the defense lawyer from entering the court for a maximum period of 3 months in case he committed a serious behavioral mistake.

2-2-2 Clear and Compulsory rules to avoid the conflict of interests between the judge and the litigants

Confirming the principle of the non conflict of interests in law is essential to confirm the principal of impartiality in taking a judicial decision. The texts stating the exclusion or the dismissal of lawyers in certain cases are exploited in the event of a special friendship or bad relationship between a judge and a litigant, as stipulated by article 120 of the Code of Civil procedure for judges and article 769 of the said Code for arbitrators. These articles imply that the judges or arbitrators inform the litigants of the causes of exclusion or dismissal at the risk of annulling the verdict.



On the other hand, article 116 of the Code of Civil procedure allowed the transfer of the case from one court to the other in case there is a reason to suspect the court's neutrality, or if examining the case before a certain court disturbs security. The transfer decision shall be taken by the Court of Cassation. Practically, these rules are generally applied, if not on the initiative of the litigants, by the judges. This was the case when a judge examining leasing cases (Judge Mirna Bayda) resigned in Beirut from examining the file of an association she was member to before engaging in the Judiciary. This was also the case of a retired judge after being appointed arbitrator in litigation by the president of the Court of first instance in Zahle, for having given his opinion in the litigation case before being appointed an arbitrator thereto.

2-2-3 Rotative and Compulsory Declaration of income and property

No text is specially drafted for the judiciary staff to submit rotative and compulsory declaration of income and property, and not even a general text on rotative declaration.

However, some judges follow, like all other public servants, the text of article 4 of the law number 154 dated 27th December, 1999, called Law of Illicit Enrichment. This text binds every judge of the third degree or any other equivalent or higher degree to submit, immediately after starting his judicial career, a declaration signed by him stating the movables and immovable that he, his wife and minor children own.

It is noted that after presenting the said declaration, no effective monitoring or follow up is exercised; the judge is not bound by any rotative reports until he resigns. It is very difficult to monitor a judge's wealth, except from the outside appearances. If it were possible to check his immovable, it is impossible to monitor his liquid assets due to the very strictly applied banking secrecy in Lebanon.

Consequently, monitoring and inspection must be activated, and principles of service and transparency must be promoted at the judges' level.

2-2-4 Level of awareness of the judge for his judiciary mission

It is very important for judges to understand they are exercising a public power that is one of the most important powers since it is at the service of



justice. They are not mere civil servants entrusted with public service or institution work like other administrative servants.

In an article published in Annahar newspaper on 19th October, 2005 entitled “The level of corruption in Lebanon according to the indicator of Transparency International”:

“Judges are nowadays the solution for many problems in Lebanon, where corruption is rampant and rising: clientelism, (favoritism), bribery, illicit enrichment, money laundering, power abuse, arbitrary administration, random arrests... terrorist explosions, social and economic crimes now considered as ordinary, but not less dangerous and alarming and reflecting the high level of corruption: tampering with distribution of power, violation of public services’ networks, fraud in selling food, pollution of drinking water and the environment, environmental crimes... all of which fall, with no exception, under the judiciary competence and within its jurisdiction.

The question to be asked is: Do the judges realize how important the responsibility entrusted to them is and act thereon?

In many cases, judges act as if they were ordinary civil servants who fulfill a job at the service of justice, and are convinced that this much only is required from them. However, pioneer judges understand the reform and development role they can carry out. This was showcased in pioneering verdicts delivered by some judges in Lebanon, especially in the field of human rights, like defending basic and religious freedoms and rights, freedom of the press, implementing democratic principles despite the pressure weighting in the last few years. Some of these verdicts were published by the Lebanese Association for Sustainable Civil Peace, in cooperation with the initiative of the American Partnership with the Middle East in March 2006.

The American Partnership initiative is currently coordinating with the Lebanese judiciary to develop the judges’ technical and scientific performance, considering it is the essential and certain path towards economic development and growth to ensure a competent judge can gain the confidence of investors. (Annahar newspaper, 11th April, 2006)

In conclusion, the judicial institution is a moral body with its staff acting as a lifting apparatus. If the institution and its members cannot be separated, one cannot deny that justice implementation, that is following one’s



consciousness, formulating and declaring verdicts and assuming one's responsibility, is the work of judges as individuals and not the work of the judiciary as an apparatus ("Samples of Pioneering Verdicts- Defending Justice, Equity and Freedoms in Lebanon, edition 2006)²⁹

2-3 Integrity of the trial

We had tackled this issue when talking about institutional and personal integrity in clauses 2-1 and 2-2. Therefore we refer thereto.

To avoid redundancy, we will tackle some issues that were not detailed in the mentioned clauses, especially equality before the judiciary in general, considering we already developed in the previous articles, the principles of a fair trial, i.e. transparency, publicness, neutrality, right to defense, and possibility of challenging the verdicts.

2-3-1 Equality before the judiciary in texts

Equality before the law implies all are equal before the judiciary in general and before similar courts, according to the same rules and without any discrimination, and all are equal before the judges examining their cases without any alignment.

The Lebanese law applies the principle of equality and includes therein all the Lebanese and individuals residing on the Lebanese territories, regardless of their nationality, race, gender or religion. The only exception thereto is the bearers of Israeli passports, but not the non Israeli Jews. Equality before the judiciary is one aspect of equality before the law, and is conformed in the constitution, positive laws, and international conventions.

- Paragraph C of the constitution's preamble stipulates Lebanon is a democratic parliamentary republic, based on equality in rights and duties among all citizens without any discrimination or difference.

- Article 7 of the Constitution states that all Lebanese be equal before the law, and enjoy civil and political rights, assume all public duties and responsibilities without any discrimination.

²⁹ Published by the Lebanese Association for Civil Peace



- Article 2 of the Universal Declaration of Human Rights confirmed the principle of equality for every citizen towards others to have his case examined before an independent and impartial court fairly and publicly to decide upon his rights and duties and any criminal accusation laid against him.

2-3-2 Equality before the judiciary in reality

Equality before the judiciary implies three basic conditions:

- Equality in the right to prosecution
- Unity of courts and rules therein
- The right to refer to higher courts to challenge verdicts

The first condition is flawed due to real legal privileges impeding the prosecution of certain individuals, such as public servants unless after the lifting of immunity, according to the code of penal procedure, the members of parliamentary and executive bodies enjoying immunity, members of labor unions, members of diplomatic corps, some civil servants with specific ranks and degrees. Legal procedure requires lifting immunity off all these groups to prosecute them, which hampers justice, balance and equality in comparison with other litigants.

The second hindrance to equality before the judiciary is the breach of the principle of free justice. As important as this principle is, the Lebanese legislator has only adopted it partially.

The law on judicial fees imposed many fees on litigants, the most costly of which being the proportional fee imposed on the claim and the implementation of verdicts, reaching 2.5 % of the claimed sum or verdict debt (law number 710/98). It is worth mentioning that this fee is not paid only once, but in every court of every degree, whether in appeal or cassation. When adding the other fees, i.e. the fee of the judges' mutual aid, a fifth of the proportional fee, fixed fees, notifications, lawyers' stamps, fees of registration of proxies before the Bar Association, the total of these fees can get the very highest.

Lawyers' fees sometimes reach 20 % of the claimed sum or are fixed sums agreed upon with the lawyer, who pays a part thereof in advance.



The programs of judicial aid are partially implemented and require conditions almost impossible to meet, despite all the efforts exerted by the Bar Association and private organizations.

All these facts combined make referring to the judiciary very difficult for some people, breach the principle of equality before the law, the right for everyone to refer to the judiciary. Thus, justice is sometimes done privately, and with no reference to the judiciary, jeopardizing the social balance.

However, the principle of free justice is partially applied before some special courts, like arbitral Councils, whereby workers are exempted from fees and sums paid to first degree appropriation commissions and in personal lawsuits before the criminal judiciary.

2-3-3 Effective judicial monitoring over courts' procedure

The Code of procedure imposed strict rules on the court's procedure, and entrusted their implementation to the judges. However, judges apply these procedures at their discretion, and do not abide by the stipulated time limits, since they consider they are limits for motivation and not compulsory limits for delivering verdicts. A judge's personal considerations also make their way in settling the lawsuit and examining the case, taking into consideration the accumulation of cases before him. Principles of a fair trial become mere procedure, a prosecution takes too long and often judges abstain from settling the cases, sessions are adjourned for long, verdicts are not delivered at the right time, but rather one year, or more, later.³⁰

In this regard, we ought to mention the works of the Cases commission in the Ministry of Justice, since it is the state's legal representative in the lawsuits against the state. This commission, headed by a judge and formed of judges as members, sometimes obstructs justice when its members are not informed of its sessions' dates or of the cases' file unless whenever they wish to. Thus they keep notifications and do not return them to the courts' offices but when this suits them.. It can sometimes take months, thus obstructing court procedures in the lawsuits where the state is one of the

³⁰ There is a clear contravention to the principle of equality before the judiciary in article 80 of the State Council Statute, making into four months the delay for reply or assignment, in favor of the state and the public institutions. This delay starts only eight months after the notification, contrary to the minimum delay granted to other litigants. This constitutes a waste of time and an unjustified extension of trial.



litigants. An example of which being a lawsuit before a court to challenge a levy order issued by a ministry (the Ministry of Telecommunications), whereby the objector required the time limits be shortened. In fact, they were shortened and the state was given 5 days to reply. When the announcement representative tried to inform the state of the session's date and the reduced time limit, the Cases Commission took over the announcement and did not return it to the court. Thus, it cancelled the judicial decision simply and obstructed the court from taking a decision to suspend implementation.

2-3-4 Specific methods to challenge judicial decisions and possibility of challenge to all decisions with no exception

This issue will be tackled in chapter four, after having developed it partially above.

2-3-5 Possibility of access to legal information and judicial verdicts

Laws, decrees and decisions delivered by various authorities in Lebanon are published in the weekly official gazette, which is sometimes issued in special supplements. However, the official gazette is not largely sold to the public and is not distributed to private institutions. It can be acquired through subscription, or from the few bookstores selling it. This gazette is not automated yet and is still issued on paper.

In parallel to the official access to information, we can say that at the private level, no legal and integrated information banks are yet established in Lebanon to provide with all the information on laws and to be easily and electronically accessed. However, some individual institutions publish and distribute some legal encyclopedia and works. Their customers are specialized experts, and their works are costly, knowing that the major part thereof is still on paper.

Judicial verdicts and courts' jurisprudence are not publicly published and easily accessible. Judicial magazines and circulars publish excerpts thereof.³¹

³¹ The State Council is assembling its provision and publishing them in volumes accessible to researchers for consultation and exploitation.



Some legal experts and judges publish these verdicts and comment thereon in books sold at specialized bookstores.

Whoever wishes to be informed of judicial verdicts shall visit the courts to obtain copies thereon in the event he was able to have access to the said file, which is often very costly.

3- Competence

3-1 Adequate qualifications of judges and judicial personal

3-1-1 Clear and objective qualification requirements

We had tackled this theme partially when talking about guaranteeing job stability. We also set the criteria based on which the judicial candidates' skills are determined, i.e. educational competence, ethics, and training in the Institute of Law, or determined experience for lawyers' identification.

However, this only concerns candidates for judicial, administrative and financial courts, and not candidates for military and religious courts nor the judicial assistants. This topic will be detailed later on.

3-1-2 Adequate Educational and professional qualifications

In this regard, distinction must be made between judicial, administrative and financial courts on one hand, and military and religious courts on the other hand. Education requirements and the necessity of mastering a second language do not apply on religious courts judges nominated among religious leaders, often not enjoying of requisite education and experience. Moreover, military courts' judges may only have a B.A. in law, without the need to undergo training in a law institute. Therefore, more often, these judges lack professional and practical experience. However, the public prosecutor before these courts is an exception since he is usually a judge selected among judiciary judges graduated from the Institute of Law or designated according to experience and competence required for judges' selection.

Judicial assistants are usually clerks, heads of offices, and court ushers. They usually do not hold university diplomas, but rather complementary or high



school diplomas. They are also considered experts, and a big difference lies in determining their required skills. Some are bound by law to have university education, specialized in engineering or medicine for example, and others are not bound by university education by law, since their experience is considered sufficient, such as traffic experts.

3-1-3 Rules of moral standard

The legal text is limited to ensuring that the candidate for a judicial post enjoys his civil rights, is not convicted of a felony or misdemeanor, and free from all diseases and disabilities. Conventionally, an inquiry was conducted about the candidate in his living environment to make sure his conduct and behavior are sound. However, this method is no longer adopted. Available justifiable methods are nowadays adopted such as his judicial record.

3-2 Objective criteria to choose judges

In this chapter, we will tackle the issue of judicial, administrative and financial judges only.

3-2-1 Specific and objective criteria to choose judges

Objective criteria to choose judges are based on educational and moral skills mentioned above for judicial, administrative and financial judges. As for military and religious judges, no specific criteria are set for selection, except for the military judge who must hold a B.A in law. These qualifications, however, are disparately applied among the candidates as proven hereafter.

3-2-1-1 Specific criteria for evaluating qualifications

As we mentioned above in paragraph 1-5-2-1, specific criteria are set for the documents required from the candidate³². Regarding his personal status and personal qualifications, they are left for the discretion and assessment of the examining committee, whereby it is possible to raise many questions about strict compliance with the assessment in some cases, during personal interviews³³.

³² Refer to article 1-5-2-1 and explications in the margin.

³³ Refer to section 3-2-2 below.



3-2-1-2 Public and competitive entrance exam

In principle, judges in Lebanon are appointed among trained judges admitted to enter the Law Institute, where they follow a three-year period of studies and training.

Before entering the Institute, they must be educationally and morally qualified as mentioned above, they must pass the test of the Higher Judicial Council done by a commission of judges to be appointed to this end. They must, after passing the test successfully, be accepted, in the personal interview before the Higher Judicial Council which determines the list of admitted candidates.

The reality is much different. Judges may be chosen among experienced lawyers or judicial assistants. In fact, in 1995, a flagrant breach of criteria and qualifications was committed, since more than one third of the judicial body was appointed among lawyers with very small experience and among judicial assistants, without undergoing training at the Law Institute. Moreover, political, confessional and tribal meddling had its share in choosing and appointing these judges.

3-2-1-3 A Psychological Test

No psychological test, in the scientific meaning of the term, can be applied on a candidate to the judiciary. The candidate is only required to be free of all diseases and disabilities³⁵. Therefore, the only test he undergoes shall be the interview he has after passing the entrance test with the Higher Judicial Council. This council's judges assess the candidate's personality throughout their conversation with him during the interview that is not considered a psychological test.

However, requiring the candidate to be free from all diseases and disabilities allows the examining committee to call for a psychological test, although this was not applied so far.

In the interview with the lawyers and judges in the in-depth dialogue session, they affirmed that sound psychological health is an integral part of

³⁵ Ibid (1)



the candidate's general health. They also confirmed that undergoing a psychological test is necessary and useful, because a large number of those who brilliantly passed the entrance exam failed afterwards in their professional performance, and were thereby inadequate for a judicial career as later proved.

3-2-2 Complusory and determined assessment system

It appears from what we mentioned above that assessing the skills of the candidates to the judiciary is based on two aspects, a determined aspect, i.e. objective conditions and passing the written entrance test, and a non determined aspect, i.e. the approval of the Higher Judicial Council after the candidate's interview. This interview's result is subjected to the discretion of these judges, and is only governed by personal conviction.

It is worth noting in this regard that the examining committee has all the right, discretionarily, to go beyond the entrance written exam, and content with the personal interview, , in the event the candidate holds a PhD in law, after the submission of the relevant thesis. .

This caused much confusion in the entrance exam held to enter the Law Institute last year, since the examining committee exempted from the interview the candidate Michel Tanios Chahine only, although other candidates also had a PhD in law, and took into consideration other criteria it deemed suitable. Other candidates who were not exempted objected to this decision, and accused the examination committee, and thereby the Higher Judicial Council, of applying double standards. A one week dispute rose between the candidates and the committee and was showcased in the newspapers.

3-2-3 Gender Equality in appointing judges

The law of the public service in Lebanon and the criteria governing the admission in the judiciary do not discriminate between men and women. In fact, more than 30 % of the judges in Lebanon are women, and are appointed to all types and degrees of courts.

Women are expected to form the majority in the judiciary by 2015. According to the Ministry of Justice, women are joining the judiciary in



large numbers, and the majority of graduating judges at the Institute of Law are presently women.

3-3 Objective and Clear system of promotion

3-3-1 Standard and objective criteria for promotion and transfer

We had already tackled this topic in this chapter's first part when developing the guarantee of occupational stability, and would like to refer thereto. In this respect, distinction must be made between promotion and transfer.

Promotion is subjected to determine as well as non determined factors. The determined factors imply that the judiciary has a system (cadre) of 22 degrees, each judge receiving one degree every two years as well as a financial bonus. This promotion is compulsory and cannot be changed unless for disciplinary reasons as later developed.

As for promotion to determined positions such as a court's presidency or first presidency in different courts or higher offices, it does not fall under determined criteria, except for the criteria required for presiding the State Council. A candidate thereto must hold a PhD in law.

Often, various sorts of interference and mediation govern the appointment to higher positions.

The most dangerous of all is the change or amendment to the criteria to go with the skills of certain individuals. This was the case when one of the State Council's presidents was appointed. Law requires he holds a PhD in law which was not acquired, and the law was amended in his favor; requiring the candidate to hold a PhD in law was cancelled. . This is a blatant infringement of the legislation principles, since no law shall be drafted for personal interests because laws have a public aspect.

The transfer is not subjected to determined criteria although Lebanon endorsed the UN Declaration on the basic principles of the Judiciary's Independence, confirming the principle of the judge's irremovability.

Transfer in Lebanon is carried out at the discretion of the Higher Judicial Council or the executive power in some higher positions. Judicial appointments are undertaken every year by the Higher Judicial Council in



coordination with the Minister of Justice. They are issued pursuant to a decree, while higher appointments are issued pursuant to a decree by the executive power according to its discretion.

Sometimes, judges may be transferred or not transferred for disciplinary or vindictive purposes as mentioned in this chapter's first part.

Some eminent judges, officials and influential parties may not deem it necessary to determine specific and objective criteria for transfer. This was stated by the head of the State Council Judge Ghaleb Ghanem whom we interviewed as enclosed with the present paper. He considered this issue as “hard to be confirmed in legal texts or detailed systems or decrees, since it relates to the parties responsible of the judicial institutions, thereby it is the responsibility of the Higher Judicial Council when judicial appointments are carried out to take into consideration how long has the judge occupied his position.”

3-3-2 Rotative performance assessment

The rotative performance assessment is limited to the charts sent by various courts through the first presiding judge to the Judicial Inspection Body which show the works and quantitative productivity of these courts, i.e. the number of verdicts delivered by every court in a judicial round lasting one year. These charts do not tackle the type of verdicts or the judges' competence. One of the judges heading an appellate court's chamber in Sidon, told us he received a note from the judicial inspection “for wasting time in referring his verdicts to foreign references and jurisprudence, and thus impeding the delivery of the required number of verdicts.”

However, a non rotative assessment may be carried out sometimes through the direct presiding judges when appointments are made, to be submitted to the Higher Judicial Council, while taking into consideration the number of verdicts annulled for every court.

A special assessment may be carried out based on the citizens' complaints or upon the demand of the Ministry of Justice. It may be useful to allow unions to take part in assessing the courts' performance, considering these unions are qualified thereto since they deal with the Court of Justice on a daily basis.



3-3-3 Determined and compulsory criteria to assess performance and implementation

No such criteria are determined, unless what is requested in the charts submitted by the first presiding judges to the Judicial Inspection Body. The criteria followed are the number of verdicts delivered by the court. This may lead to lack in concentration on the verdicts quality and affect the meticulous study of the case. Any other criteria are not written; often no one is held accountable due to bad performance, while many judges complain some of their colleagues do not fulfill their duties, do not participate in examining files (in the courts formed of many judges), and do not even take part in the deliberation; while, one judge only is the one who examines and interprets the case. This was echoed by the above mentioned head of the chamber at the Court of Appeal in Sidon. This long-term expert judge called for setting compulsory criteria to assess the judge's performance and therefore apply the principle of reward and sanctions.

It would be better to adopt all quantitative and qualitative criteria in assessment, requiring if applied, highly qualified and performed human power.

3-3-4 Balance and gender Equality

No discrimination is stated in the legal text or implementation between men and women regarding the promotion, since all enjoy the same treatment.

3-4 A clear and objective disciplinary system

3-4-1- Clear and transparent disciplinary criteria

The judicial disciplinary system in Lebanon is based on stable criteria from inspection to the taken measure or the sanction imposed on the judge. These two phases will be tackled hereby.

3-4-1-1 A system determining the violations and sanctions while stating the right to defense



A disciplinary action is moved against the judge in case he failed from meeting his job duties or he committed acts against dignity, honor or good manners.³⁵

Disciplinary sanctions are determined, and range from warning, blame, delay of promotion for less than two years, reduction of the judge's degree, suspension of work for no longer than one year with suspension of salary, dismissal, removal and deprivation from dismissal compensation and retirement pension.³⁶

The head of the disciplinary council shall submit a report after conducting the investigations regarding the status of the judge referred to discipline, after hearing him and hearing the witnesses under oath. The trial shall take place in secrecy. No formality of the disciplinary lawsuit may be published other than the definite verdict in case it includes dismissal or removal. The judge referred before the disciplinary council has the right to hire one lawyer or a colleague judge. The council shall deliver its justified verdict the day the trial takes place or the following day. The decision of the disciplinary council is challengeable by the convicted judge or by the head of the Judicial Inspection Body within 15 days before the Higher Judicial Disciplinary committee. The procedure before the said committee is similar to the procedure before the disciplinary council. The decision taken by this Higher committee cannot be challenged pursuant to article 87 of the Law on Judicial courts.

It is worth noting that on 31st May, 2000, law number 277 was issued regarding the amendment of some articles in the bylaws of the State Council, including paragraph 2 of article 64, newly added, stipulating that the disciplinary decisions delivered by the Higher judicial Council shall not be subjected to review, including the review of the challenge. Some deputies challenged this text before the Constitutional Council which delivered its decision on 27th June 2000, deeming the judiciary's independence has a constitutional value and may not be fully implemented unless the judges is independent and guarantees are ensured for this independence, including the right to defense, having a constitutional value, and the right to review when disciplinary measures are taken against him. Therefore, the said text was annulled.

³⁵ Article 83 of the legislative decree n° 150 dated 16th September 1983 and its amendments.

³⁶ Ibid.



3-4-1-2 Determined and Fair sanctions to be fully implemented

The disciplinary system we detailed in the above paragraph is integrated and complete, and states sanctions as detailed in paragraph 3-4-1-1 above. The reality may be different. Besides the recurrent cases that may not be covered, it is very rare for judges to be referred to a disciplinary council.

3-4-2 Disciplinary procedures are managed by the judiciary

The body that refers the judge to discipline is the judiciary inspection body comprising: a highly-ranked judiciary president, general inspectors, inspectors, eleven judges designated by virtue of decrees rendered in the council of ministers. It conducts investigations, having power extending on all courts even military courts, courts clerks, notaries, experts, receivers and even employees of the Minister of Justice.

The disciplinary council consists of a presiding judge of a chamber before the Court of Cassation as a president, two presiding judges before the Court of Appeal as members. Prosecution is carried out by the head of the Judicial Inspection Body at the beginning of every judicial year.

The Higher commission for Discipline is formed of the head of the Higher Judicial Council, who is a judge presiding the Court of Cassation and four judges.

3-5 Adequate and continuous judicial training

3-5-1 Continuous and specialized judicial training programs

Lebanon follows judicial training programs for new trainee judges after they successfully pass the entrance exam to the judiciary.

The judges chosen among lawyers or judicial assistants undergo a short training program at the judicial institute for no longer than one year.

The training programs followed by the judicial institute last for three years for new judges admitted at the Institute, and include deep theoretical studies of the most important judicial issues (administrative, criminal or civil). The programs also cover practical applications such as studying the facts in certain cases, formulating verdicts, elaborating large studies, researches,



legal deliberation, seminars, and summary of new jurisprudences prepared for publication.

Outdoor training includes work in the courts as defined by the presiding judge, visits to penitentiaries and correctional facilities, rehabilitation centers, economic and financial institutions and public administrations... This training lasts for the three years duration of the study at the institute.

Training is completed by graduation, without any continuous training programs, noting that developing the judicial institute will tackle such programs later.

It is worth mentioning that in-depth dialogue sessions with judges and lawyers resulted in recommendations for the necessity to set up continuous training programs for all judicial bodies.

3-5-2 Specialized judicial institute

A judicial institute was established in Lebanon pursuant to decree number 7855 dated 16th October, 1961 and organized pursuant to decree number 10494 dated 4th September, 1962.

This Institute is one of the oldest judicial institutes in the Arab region, and has graduated many Arab and Lebanese judges.

Today, the Institute is being developed in cooperation with the French judicial institute as of the beginning of 2004. The development process tackles the assignment of the president of the Institute, and the appointment of an administrative director thereto, developing its administrative staff, amending the programs of theoretical and applicative (practical) studies, enlarging its scope of action in continuously training and rehabilitating judges, assistants and experts, and finally ensuring an independent building for the Institute.

3-5-3 Adequate resources

Training resources were very limited until the last few years. As of 2004, various donations were granted to the judicial institute, including French donations, the donation of the American Partnership Initiative for the Middle East, and contributions from the European Union.



3-5-4 Foreign Language Training

We mentioned that a law candidate must master the French first and the English second, beside the Arabic language. Some courses are given in these two languages at the judicial institute, knowing that the examining commissions are greatly indulgent in the matter of foreign language master, and this does not serve the judiciary interest.

4- Efficiency of the judicial system

4-1 Transparent, clear and effective Codes of procedure

4-1-1 Modern procedure and systems

Many laws govern the procedure before different judicial references, the most important of which being the Code of civil procedure issued pursuant to legislative decree number 90/1983, and the Code of criminal procedure issued on 2nd August, 2001 in law number 328. Other administrative and special courts follow their own procedure or the Code of civil or criminal procedure in the absence of their own legal texts thereon.

The Codes of Criminal and Civil Procedure in Lebanon are modern and update. They observe all just and fair action elements including equality before the judiciary, publicness, rights to defense, plurality of court's degrees, presumption of innocence despite all the flaws therein, which sometimes lead to the abstention from delivering verdicts, or delaying the prosecution, in the absence of a strict control on the court's procedure, such as the non-respect of time limits, the delay of hatching, conventional methods of notification, including prevarication of the plaintiff in coordination with the party to be notified, or leaving the notification for the litigants etc...

4-1-2 Clear and mandatory procedures to take legal action

These procedures are precisely determined in the Codes of procedure. They showcase clearly how legal action is taken, registered and notified to the



defendants, how fees are paid... However, these procedures allow procrastination since they do not bind the concerned parties to submit their documents at the beginning of the trial, and do not impose the examination of the submitted papers at reception. Moreover, the first phase of legal action lacks effective judicial monitoring, since the judge does not receive the file before the start of courts' procedures.

On the other hand, ordering notification and calling for determining the sessions' dates is left for the litigants. Any litigant may take legal action and perform hatching on the land register or on the commercial register of a company or an institution. The litigant may limit himself to these actions and thus exhausts the other litigant's rights for long and delay this exhaustion. Litigants are notified of the lawsuit only on the initiative of the plaintiff. The first session is only set upon the request of one of the litigants. It is better for all these procedure to be entrusted to the court and its offices to avoid any procrastination.

4-1-3 Adequate court staff, including experts

4-1-3-1, 4-1-3-2 Sufficient court staff and clear and objective criteria for choosing

We had already tackled this issue when talking about judges and judicial assistants' qualifications in chapter three regarding their competence. However, we only mentioned their educational skills, and therefore we add the following:

The courts' human apparatus in Lebanon is one of the courts' problems. Although their staff is most of the times sufficient, they face real challenges in distributing it fairly on all offices and in training the offices and departments' presidencies, (clerks and chief clerks) whether at the level of education, since only a high school diploma is required thereto, or at the level of training. Until lately, no training programs were set for them. Their high school education and their experience with their colleagues were considered enough. Court ushers would only perform their duties if they receive gratuities that the public considers as normal usage. Nowadays, this applies to all the prosecution apparatus in general.

The staff's reference is the judges supposed to represent an apparatus of monitoring and reform for the staff. However, their monitoring role is



effectively absent, especially that the large majority of judges do not come to courts except for one or two days a week, in violation of the law.

The third flaw is the lack of automation yet at the courts' offices. All formalities are done on paper and in writing, thus taking much time and sometimes causing chaos in managing documents and files for a lack of an automated saving system.

We tackled the issue of experts in chapter three when mentioning they are not part of the courts' staff, but are rather appointed based on an entrance test requiring educational qualifications and on-field experience. However, choosing them is also based on other non objective factors. Sometimes, some of them have no experience at all in their field, and they have no idea about the experience's legal rules as set by the Code of Civil Procedure, such as publicness, presence of parties and organization of properly procedures. This may cause the court to annul reports and fine experts, as it was the case many times³⁷. Moreover, many of these experts lacked proper education.

In this regard, we ought to mention some development projects such as the training of the heads of offices and rapporteurs. This training has already effectively and rotatively started. Regarding notifications, Code of procedure must be amended as to allow notifications through surface or fast mail. As for experts, highly skilled experts must be hired and they must enjoy competent material and technical qualifications, instead of hiring individual experts who lack such qualifications.

4-1-4 Clear rules for challenging judicial decisions

Code of Criminal and Civil Procedure stipulated the procedures to be followed to challenge criminal decisions. These procedures are clear, strict and objective and resemble procedures in democratic countries. However, it is worth noting the following:

³⁷ The first court of instance in Beirut issued a decision annulling a report drafted by one expert auditor it designated in a lawsuit instituted against a bank. It obliged the bank to restitute the prepayment it gave him, because it abstained from proving the litigants pleadings and rebuttals in reports???



- The laws governing the challenge to decisions are not unified. Every court has its own time limits and rules, which makes it very difficult for lawyers, judges and litigants.

- These rules are not strictly applied except for the rules of prescription, whereby the challenge is overturned after the time limit is exceeded. These rules are also blamed for being very strict in form, thus jeopardizing the challenge which can be returned for pure formal reasons that do not affect the validity of the challenge on the long run; for example, not enclosing the lawyer's original proxy with the challenge of cassation although a copy thereof would have been enclosed.

- Many decisions delivered by some judicial references are not susceptible to challenge as mentioned above. The most important of which are the decisions taken by the State Council, the Judicial Council and the Constitutional Council. Challenging labor verdicts, however, is only allowed through cassation without the possibility of appeal. In addition, some verdicts are not susceptible to challenge if the verdict thereto is less than a determined sum, as well as the decisions of the district justice regarding private schools, decisions of arrest before the investigating judge and the decisions delivered by the public prosecutor's office.

4-2 Transparent and objective trial management

In such cases, we note that time is spared to reach a judicial enforceable decision at the expense of general principles of fair trial. This could be prevented by reducing and strictly applying the trial delays avoiding procrastination.

4-2-1 A system for distributing cases based on clear, objective and fair criteria

Such system is stipulated in the Codes of Procedure determining the courts' jurisdiction and the distribution of cases thereto, regarding the type or venue of their competence or the case's quorum.³⁸

³⁸ The value of financial lawsuit on the basis of which is defined the judge's or the Court of First Instance jurisdiction



Actions are distributed among the chambers of first instance and appeal courts, pursuant to a decision by the Minister of Justice³⁹, after the approval of the Higher Judicial Council on the proposal of the court's first presiding judge, while actions of the chambers of the Court of cassation are distributed pursuant to a decision of this court's first presiding judge. The actions of the State Council are distributed among chambers in conformity with a decision by the Council's president, on the proposal of the Council Office (article 31 of the Council bylaws).

4-2-2 Case assignment based on specialization

The criteria for distributing cases over any court's chambers are quite objective criteria stipulated in legal texts and they relate to jurisdiction. Breaching these criteria may cause the case to be returned in form, and in some cases, to submit it to the proper chamber. These criteria are based on qualitative jurisdiction. Within one court, jurisdiction is relative. In the event a lawsuit was submitted before a chamber and fell under another chamber's jurisdiction, it will be administratively referred to the latter. Courts' jurisdictions are absolute; the lawsuit is returned in form in the event it was submitted before a non competent court. All these rules are followed in all courts' degrees.

However, it is worth noting that the above mentioned is the court's jurisdiction not the judge's. Judges are not qualified according to a special jurisdiction. They are transferred from one court to the other randomly, without taking into consideration their educational specialization. A judge may be in a civil court and then be transferred to a criminal court. This is no longer accepted nowadays since legal sciences and educational specializations are diverse.

4-2-3 Ensuring sufficient financial resources

We already mentioned that the judiciary's budget is a part of the budget of the Ministry of Justice. The rules adopted regarding the budget's sufficiency in judiciary are the same applied on judicial assistants. Even though the budget sufficed to cover the current expenses, it is not enough for development, automation and training, currently depending on foreign extra-budgetary assistance and private initiatives..

³⁹ This is an example of the Executive Power interference in the judiciary work.



4-3 Judgment within a reasonable time

4-3-1 Clear and reasonable procedural timeframes for every case according to its classification

No text of law is drafted or applied currently to bound the court with a determined time limit (ceiling) for the procedures, especially that a large number of procedures preceding the public prosecution are left for the court's offices and do not fall mostly under the judge's monitoring. Delays for pleadings exchange are not mandatory, do not provoke withdrawal and remain discretionary.

One cannot say that setting a time limit is now impossible under the judiciary's crisis today, whereby the judiciary crisis exacerbates due to the insufficient number of judges, and the lack of rehabilitation of judicial assistants, the unsatisfactory performance of some judges and their carelessness towards any accountability, the procedures allowing judges or lawyers' procrastination, as well as the notification methods which no longer answer the era's requirements of rapidity, the prescription time limits in hachuring the case, thus allowing the case not to be reviewed or instituted for one year. These time limits may be reduced by amending the Code of Civil Procedure, and by reducing the hachuring period from two years to three months, and the period to dismiss the executive formality from one year to one month.

4-3-2 Disciplinary measures if judges delay court processes

Therefore, in accordance with reforming judicial management by raising the number of judges, adopting automation and modern notification methods, reducing the judicial recess to one month instead of two months and a half, rehabilitating judicial assistants, amending the code of civil procedure to reduce some limits and make some other time limits compulsory for the judge, judges must be bound to set a time limit to settle the lawsuit after examining the case at the beginning of the public prosecution, at the risk of being referred, in the event of procrastination or abstention from delivering the verdict, to inspection and sanctions of conduct which are not currently implemented.



In this respect, it is worth noting that most courts procrastinate and delay certain cases for long without any obvious reason. Delay may reach six months, only two sessions are held yearly; some judges may also adjourn the verdict which they do not deliver at the set period. Sometimes more than one year passes exceeding the time limit set for delivering the verdict. Examples are many on lawsuits instituted since more than ten years, while still at the courts of first instance.

The State Council is very slow in settling the cases. Notification therein is carried out by police, from one police station to the other. Notification may, therefore, take months, and time limits granted for public administrations and institutions to answer thereon are very long.⁴⁰

4-3-3 Holding procrastinating lawyers accountable

This rarely happens, and in parallel to the activation of the judiciary inspection to fight judges' procrastination, the Bar Association must take disciplinary measures to stop procrastinating lawyers, especially when ill intention is proven in their acts; for example, if the lawyer takes a measure forbidden by law for no other reason but procrastination. The sanction, in case of repetition, may be the cancellation from the table.

4-4 Fair and effective enforcement system

What we mentioned above regarding the procedures and delivery of verdicts is applied on their enforcement, since they are entrusted to the judicial apparatus and assistants.

4-4-1 Determined enforcement procedures

These procedures are determined in the Codes of procedure. However, the impediments thereto make it look like a new phase in the prosecution.

The president of the Court of Cassation and the Higher Judicial Council then a former Minister of Justice, late Yussef Gebrane, said that winning the case

⁴⁰ The State Council has very old cases neglected by concerned parties due to their low value after the national currency depreciation. The number of the state council chambers didn't change, so the number of judges didn't increase although the number of cases has doubled. Even more, a chamber presidency was annulled and transferred to the state president who lacks already of time.



takes place twice: first, when the verdict is delivered, and second, when it is enforced. If the enforcement procedures are well determined, they are at the same time very complicated, and may sometimes reach the limits of a new case. Moreover, notification, time limits, and objections may undergo procrastination, the financial constraint may also be added when fees are sometimes required for the verdict to be enforced.

4-4-2 Institutional accountability system for the enforcement process

The procedures followed for delivering the verdict apply on its implementation as well. Enforcement judges and assistants undergo the same judicial inspection, conduct sanctions and accountability. The same regarding judges' inspection and discipline applies on enforcement offices.

4-3-3 Effective enforcement

4-4-3-1 Against the Persons of private law

Enforcement against the persons of private law faces the impediments we already mentioned in the previous clause, such as the complication of formalities, financial cost, possibility of procrastination and abstention from notification. However, enforcement against persons of private law ends successfully if the person subjected thereto is complete even if the enforcement period takes too long.

4-3-3-2 Against the persons of public law

The greatest difficulty is the enforcement against persons of public law. Enforcement is not allowed on public property and wherever administration is often of ill faith while law supposes always it has good faith.

In many cases, administration does not enforce the verdicts issued against it, with many justifications. This was the case of the arbitral verdicts issued by the International Chamber of Commerce in favor of the two cell companies France Telecom and Libancell, while the administration still refuses the enforcement of these verdicts. Moreover, the German contracting company Walterbau seized a plane belonging to the Middle East Airlines in a Turkish airport to enforce the arbitral verdict issued in its favor.



In other cases, the administration, instead of enforcing the verdict in cash, binds the party who won the case to cash treasury bonds, the selling of which makes the latter incur losses if they were short term bonds. The administration also resorts to bargaining to reduce the value of the amount paid for enforcement, as it was the case for amounts that were to be paid, pursuant to a legal verdict, to some internal security officers, and for amounts that are now being paid to the two cell companies. This was also the case for foreign lawyers who won foreign judicial verdicts to cash their fees (English office of Laurance Graban)

When the administration abstains from enforcing the issued verdicts, it encourages, and this is dangerous, other civilians to do the same. Thus instead of giving good example, it shows bad conduct.

Therefore, the principle of assumption of the administration's good faith is not often the case with the Lebanese administration regarding the enforcement of verdicts. This taints the administration's reputation and affects investment in Lebanon.

The said principle, which is the assumption of good faith should no longer be enforced in Lebanon, just like in France in 1919, when the French administration abstained from enforcing the verdict in favor of the gas company. The State Council therefore bound it to pay a fine, equaling many fold the amount it was bound to pay as compensation pursuant to the legal verdict, assuming the administration's good faith is annulled when its obvious ill faith is proven. The legislator was aware how serious and dangerous it is when the administration procrastinates to enforce verdicts, so he amended article 93 of the State council statute⁴¹ establishing a coercive fine to be imposed on the administration abstaining from enforcing the Council judgments within reasonable delays. This fine remains effective till the judgment execution.

4-4-4 Adequate enforcement apparatus

To avoid redundancy, we add that this apparatus is a part of the courts' apparatuses. It is bound to the same rules applied in the judiciary, at the level of judges or judicial assistants.

⁴¹ According to law n° 259 dated October 6th, 1993.



The enforcement apparatus is formed of a presiding judge of the enforcement department and assistants to him. This judge's decision is referred to the courts of appeal according to its own rules and principles.

It is worth to note that most of the enforcement departments' presidents are newly appointed judges who lack qualifications and requisite experience in verdicts' enforcement.

Moreover, the enforcement is impeded during the judicial recess where different judges preside alternately the enforcement departments for a period ranging from one week to ten days without any appropriate experience in this field, for most of the times.



Chapter three: General Policy Recommendations

We already mentioned above the Lebanese judiciary's strong and weak points, at the structural and practical levels, regarding the texts and their application. In this chapter, we will submit recommendations and solutions we deem necessary for the Judiciary to reach a higher level of independence, integrity, competence and efficiency.

The experiences of judicial reforms in Lebanon were so far partial, and did not target reforming the judicial power as a whole. Despite many proposals from politicians or jurists, mentioned above in the report's preamble, but unfortunately remaining a dead letter.

Among the projects partially implemented or under implementation the following:

- On 31 January, 2001, law number 389/2001 was issued, amending the judicial courts' law number 150/83 and allowed the election of two members of the Higher Judicial Council by their fellow judges in the Court of Cassation⁴². Moreover, the law allowed the enforcement of the Higher Judicial Council's decision regarding judicial appointments pursuant to a decision issued by this council, by a majority of seven members, in the event a conflict arises between the Council and the Minister of Justice. The law also granted the judges the right to challenge disciplinary decisions before the Higher Disciplinary Body. It also reinforced the authority of the Higher Judicial Council regarding discipline, and the authority of the Inspection commission regarding the judges' notification and discipline.
- A project for reforming and developing the Law Institute, in cooperation with the French Law Institute, as above mentioned in the report.
- A project under implementation for the complete automation of the judicial formalities at all levels, and the conclusion of a contract with the European Union in this regard in 2005.

⁴² Article 2 of the Law Decree n° 150 dated September 16th, 1983 does not stipulate the election of members at the Higher Judicial Council. They were either designated or mandatory.



However, these projects remain short of the full reforms required for the Judiciary, and which must be implemented at the following levels:

1- Independence

This report showcased that the Lebanese constitution makes the Judiciary a full power, just like the legislative and executive powers, and not a public service or administration.

However, the executive power and sometimes the judicial power still regard the judiciary as an executive apparatus under the government's authority.

Since these two powers still control the judicial power, remarkably due to the Higher Judicial Council hegemony through the judicial nominations and transfers, and the judiciary's financial and administrative affairs, although the role of the Higher Judicial Council was strengthened by law number 389/2001, the constitutional texts must be actively enforced when dealing with the judiciary, by virtue of the constitution that confirmed the judiciary's functioning independence and the judges' individual autonomy when carrying out their functions.

However, ordinary positive laws did not abide by the constitutional principles, under the influence of other powers, and subjected the judiciary to the other two powers, mainly the executive..

Effectively enforcing the constitutional texts requires:

- The judiciary's true and active separation from other powers, by investing the Higher Judicial Council with all the authority to control all the judiciary's affairs without any dependence to another power.

This primarily implies that this Council be fully formed by the judges themselves, to cast off any political, sectarian or tribal influences, and to avoid any influence over its members towards the parties appointing them. The current crisis regarding the formation of the Higher Judicial Council is the best proof thereto. This Council must also be an independent moral person to be able to render mandatory and enforceable verdicts.

- Granting the Higher Judicial Council all the authorities of the judiciary, so it becomes responsible for choosing, training, appointing, transferring,



disciplining or revoking judges. This must include all the judiciary's branches, courts and public prosecutor's offices⁴³.

- Compressing the judicial power's budget in one clause in the public budget; limiting the drafting of the judiciary's budget to the Higher Judicial Council who shall consult different courts and administrative services when drafting the budget.
- Consulting the Higher Judicial Council in draft laws regarding the judicial power before submitting them to the Parliament
- It is necessary to unify all the branches of the judicial system, limit exceptional courts and reduce their powers, especially military courts. The military courts' power must be limited to the military in times of war, and must not retain any power over civil crimes, whether the litigants are civil and military, or only inter-military.
- Annulling the spiritual and religious courts, and limiting the enforcement of religious laws to judicial courts.
- Annulling the State Council's consulting function, or reserving special chambers at the council for such function , to avoid consultations at the expenses of the council's other jurisdictions mainly judgments pronouncement, and separating the Court of Audit (financial courts) off the government's authority affiliating it to the Higher Judicial Council power.
- Separating public prosecutor's offices off the power of the Minister of Justice, and annulling the judicial power of the public prosecutor's decisions, in case of persistent authority of the Minister of Justice.

All these measures must be taken to strengthen the judicial authority's independence or the judges' autonomy.

⁴³ It is worth to discuss and study the possibility of unifying the judiciary power two sections, justice and administration, making the Higher Judicial Council responsible for and formed of both of them, and unifying the two sections of the judicial power budget.



- Ensure the judges a decent and sufficient salary. This is quite possible in view of the considerable revenues of the Judiciary alimending the state's budget as mentioned above.
- Impose harder sanctions upon whoever attempts to influence the judge's verdict, whether he were a colleague or any other party; prohibit the delegation of judges for any non judicial task.
- Provide judges with security protection inside and outside courts, by the competent security forces especially after the threats they faced in the last few years, and their effects upon their autonomy; allocate funds in the judiciary's budget to ensure this security if need be.
- allow judges to form a body to defend their interests.

b- Integrity and impartiality

- Issue a law for judicial integrity that binds judges, determines violations and stipulates sanctions thereto⁴⁴.
- Bind the judge to a law amending the judiciary law, by an addition of a mandatory and periodic statement of property, personal and family wealth statement, when entering the judiciary. This allows the Judicial Inspection Body to lift off the judge's banking secrecy.
- Set up educational training sessions for judges to raise awareness on the importance of the judicial functions, and therefore the judge's neutrality towards all external and internal factors is requisite.
- Activate the system of monitoring and inspection over the judge's performance and ensure successive monitoring through periodic reports and serious inspection of courts, and avoid hiding defects from light and favoritism.
- Elaborate a modern, developed and efficient system to allow access to legal information and judicial verdicts at low cost and without wasting time.

⁴⁴ It is worth mentioning that such a law susceptible to substitute to the judicial ethics charter faces the opposition of many judges with the pretext that it violates the judge's personal integrity



c- Competence

- ensure that judges appointed (to all courts with no exception, including military and special courts) are educationally and equally qualified and meet required specifications and aptitudes. .
- Include among the criteria required to appoint judges beside the entrance test, educational university background, social and family status, a psychological test, as well as general knowledge. These are favorable elements for admission.
- Develop training programs to include the use of modern techniques, compared legal systems, and modern judicial education; respect functional specialization, adopt continuous training programs for judges of all ranks, insist on foreign languages knowledge beneficial for worldwide information about judicial and jurisprudential development.
- Determine specified criteria for promotion, not only at the degree level as it is the case currently, but also at the post level, to avoid discretion. These criteria must be based on a rotative and continuous evaluation of performance according to specified, clear and compulsory mechanisms
- Strictly enforce disciplinary measures and accountability without favoritism and indulgence.

d- Efficiency

- Update codes of procedure to accompany new techniques, in e- registering and following up on a case, and modern means for saving documents and making notifications by adopting electronic notification and signature to spare time.
- Bind judges and lawyers to respect time limits to exchange papers and documents, and make these time limits binding instead of being inciting; amend the codes of procedure as to reduce the hachuring delay, and executive formalities to reduce vindictive lawsuits aiming at procrastination.



- Invest the judge with the responsibility of the judicial case since he receives it; bind him to determine a time limit for settling the case after determining the right procedures thereto, such as compulsory submission of documents all at once and prohibiting procrastination.; hold judges and lawyers disciplinarily accountable for such a procrastination
 - Rehabilitate continuously court staff and judicial assistants through yearly training sessions
 - Increase the number of judges and improve their skills; dismiss non productive and non qualified judges, by allowing their resignation within certain time limits, while preserving their indemnities, and dismiss them by the end of this limit, in case they did not resign.
 - Ensure means to review all judicial verdicts, whatsoever their origin is, by enforcing a law establishing administrative courts, so they become first instance courts while the State Council falls to the second degree. Establish military courts of appeal bound to justify their verdicts at the risk of annulment. Divide judicial courts to two degrees.
 - Unify and simplify procedure laws.
 - Simplify procedure for enforcing verdicts so enforcement does not require a second case; allow enforcement of verdicts rendered against the State through enforcement offices.
 - Reduce the cost of legal actions by reducing, unifying and simplifying the judicial fees through including stamp fees within all other fees.
 - Activate the system of judicial assistance so it becomes effective and fulfills its functions and enforces the principle of free justice.
- Last, judicial reforms must be comprehensive, because the Lebanese judiciary faces many problems, whether structural or functional, although its history shows respect for its independence and for its members' competence and integrity, in view of the country's difficult situations affecting directly the people's private and public culture, the level of social relations and their view of justice.

The worldwide openness towards common human values, the most fundamental of which being the respect of the human being as a value



worthy of dignity, makes strengthening the judiciary, which is the first and last protector of this value against any political or social tyranny, a fundamental and inescapable necessity.

Appendix

- 1- Back paper on the status of judiciary in Lebanon, prepared by Dr. Antoine Mesarrah and Boulos Morkos.
- 2- Report on an in-depth dialogue session with a group of judges.
- 3- Report on an in-depth dialogue session with a group of lawyers.
- 4- Report on a personal interview with MP Boutros Harb.
- 5- Report on a personal interview with Dr. Ghaleb Ghanem, Head of the State Council.



- 6- Budgets of the Ministry of Justice for 2002, 2003, 2004.
- 7- Report and detailed results on a referendum about judiciary in Lebanon led among experts.
- 8- Report and results on the public referendum about judiciary in Lebanon.