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RÉSEAU EURO-MÉDITERRANÉEN DES DROITS DE L'HOMME  
الشبكة الأوروبية - المتوسطية لحقوق الإنسان

# Lebanon

The Independence and Impartiality of  
the Judiciary



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## INDEX

<b>INTRODUCTION .....</b>	<b>7</b>
<b>I. THE LEGAL FRAMEWORK AND STRUCTURE OF THE LEBANESE JUDICIARY .....</b>	<b>9</b>
<b>1. INTERNATIONAL STANDARDS .....</b>	<b>9</b>
1.1. Binding international instruments.....	9
a. Universal Declaration of Human Rights .....	9
b. International Covenant on Civil and Political Rights .....	10
c. Other human rights treaties ratified by Lebanon.....	10
d. Effect of treaties ratified by Lebanon in domestic law .....	11
1.2. Non binding international instruments .....	11
a. Instruments emanating from United Nations bodies .....	11
b. Principles and guidelines emanating from non state actors.....	12
<b>2. DOMESTIC STANDARDS RELATED TO THE INDEPENDENCE OF THE JUDICIAL SYSTEM .....</b>	<b>12</b>
2.1. The Lebanese Constitution .....	12
2.2. Legislative texts.....	12
<b>3. THE STRUCTURE OF THE LEBANESE JUDICIARY .....</b>	<b>13</b>
3.1. Regular court system.....	13
a. Ordinary courts .....	13
b. Administrative courts.....	14
3.2. Religious courts .....	15
a. Ecclesiastical courts .....	15
b. Shari'a courts .....	15
c. Women in religious courts.....	16
d. The issue of the independence of religious courts.....	16
3.3. Special courts.....	17
a. The High Court of Justice .....	22
b. The Justice Council.....	18
c. Military courts .....	18
3.4. Other courts, committees and special councils .....	19
3.5. The Public Prosecution Office.....	20
a. Composition and hierarchical organisation of the Public Prosecution Office .....	20
b. Monitoring of the prosecutors' work.....	20
c. Role of the Public Prosecution Office in preliminary and primary investigations, and arrest and detention powers.....	20
<b>II. THE LIMITS OF THE INDEPENDENCE OF THE JUDICIARY .....</b>	<b>22</b>
<b>1. THE HIGH JUDICIAL COUNCIL .....</b>	<b>22</b>
1.1. Composition of the High Judicial Council .....	22
1.2. Powers of the High Judicial Council.....	22
1.3. Meetings and decision-making mechanisms of the High Judicial Council .....	23
1.4. Lack of financial autonomy.....	23
1.5. Criticism addressed to the High Judicial Council.....	24
<b>2. The status of judges .....</b>	<b>25</b>
2.1. Selection .....	25
2.2. Training/appointment .....	25
2.3. Ranks, retirement and remuneration .....	26
a. Ranks.....	26
b. Retirement .....	26
c. Remuneration .....	26
2.4. The principle of security of tenure of judges.....	26
2.5. Women in the judiciary.....	26
2.6. Disciplinary measures.....	27
a. The Judicial Inspectorate.....	27
b. The Disciplinary Council .....	27
2.7. Liability of judges .....	28
a. Civil liability of judges.....	28
b. Criminal liability of judges .....	28
2.8. Freedom of expression, association and assembly of judges.....	28
a. Principles and reality.....	28
b. Historical overview of collective actions of judges and current situation .....	29
<b>3. POLITICAL, RELIGIOUS AND MEDIA INTERVENTIONS .....</b>	<b>30</b>



3.1. Political interventions at the institutional level .....	30
a. In the functioning of the Constitutional Council.....	30
b. Within the High Judicial Council .....	31
c. In the functioning of the civil courts.....	32
d. Within the State Council .....	32
e. Regarding electoral supervision.....	32
f. Regarding the Public Prosecution Office .....	32
3.2. Influence of religions and the media.....	33
a. Influence of community and religious authorities.....	33
b. Influence of the media.....	33
4. OTHER OBSTACLES THREATENING THE INDEPENDENCE OF THE JUDICIARY .....	34
4.1. Hierarchical inertia .....	34
4.2. The lack of effective and fair enforcement of judgements.....	34
4.3. Limited access to legal and judicial information .....	34
a. Access to information of judges.....	34
b. Access to information by the people.....	34
4.4. Influence of the social environment.....	35
III. JUDICIAL CORRUPTION .....	36
1. THE DIFFERENT TYPES OF JUDICIAL CORRUPTION.....	36
1.1. Political interference in judicial proceedings .....	36
1.2. The use of bribes.....	37
2. JUDICIAL CORRUPTION AND THE MEDIA.....	37
IV. LAWYERS: RIGHTS AND FACTS .....	38
1. HISTORICAL OVERVIEW AND ORGANISATION OF THE BAR ASSOCIATION .....	38
1.1. The General Assembly of the Bar Association .....	38
1.2. The Council of the Bar Association .....	38
1.3. The President of the Bar .....	38
2. THE ROLE OF THE BAR IN THE INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY .....	38
3. GUARANTEES AND IMMUNITIES OF LAWYERS.....	39
4. ETHICS AND DISCIPLINE OF LAWYERS.....	39
5. THE RELATIONSHIP BETWEEN JUDGES AND LAWYERS .....	40
V. REFORM PROJECTS OF THE LEBANESE JUDICIARY.....	41
VI. RECOMMENDATIONS.....	42
1. RECOMMENDATIONS TO THE LEBANESE AUTHORITIES .....	42
1.1. International conventions .....	42
1.2. Constitutional reform .....	42
1.3. Legislative reform.....	43
1.4. Relations with civil society .....	45
2. RECOMMENDATIONS TO THE EUROPEAN UNION.....	45
2.1. Strengthen respect for international standards.....	45
2.2. Encourage Lebanese authorities to create the environment and the conditions for a global and integrated reform of the judiciary .....	46
2.3. Support to the Lebanese civil society .....	46
3. RECOMMENDATIONS TO CIVIL SOCIETY.....	46
BIBLIOGRAPHY .....	47



# INTRODUCTION

## 1. The Euro-Mediterranean Human Rights Network and its working groups

The Euro-Mediterranean Human Rights Network (EMHRN) was created in 1997 by a number of human rights organizations, from both north and south of the Mediterranean, in response to the establishment of the Euro-Mediterranean Partnership. Based in Copenhagen with branch offices in Brussels, Rabat, Amman and Paris, the EMHRN comprises 77 member organizations from more than 30 countries. The EMHRN's mission is to promote and strengthen human rights and democratic reform within the framework of the Barcelona process and EU-Arab cooperation. The Network seeks to develop and strengthen partnerships between NGOs in the EuroMed region by facilitating the development of human rights mechanisms, disseminating the values of human rights and strengthening capacities in these fields at the regional level.

To achieve its goals, the Network has established six working groups in order to address specific human rights issues in the EuroMed region: Justice; Freedom of Association; Women's Rights and Gender; Migrants, Refugees and Asylum Seekers; Palestine, Israel and the Palestinians; Human Rights Education and Youth. Each of the working groups comprises the member organisations most active in the field concerned, chosen following a call for participation and a selection process based on a series of qualitative criteria. The task of each working group is to design and implement specific policies and programmes with respect to the field concerned, to advise the EMHRN executive bodies within their respective fields of expertise and to ensure the effective delivery of the EMHRN's mandate and agenda<sup>1</sup>.

## 2. The EMHRN's Working Group on Justice

The EMHRN's Working Group on Justice was first created in 2002 and re-established twice, in 2006 and 2009, following a call for participation to all EMHRN members<sup>2</sup>. In order to gain an overview of the situation of justice in the EuroMed region, in 2003 the working group entrusted two legal experts<sup>3</sup> with the task of researching the main problems and challenges faced by the judiciaries of the region. This process led to the publication in 2004 of a comprehensive report entitled *Justice in the South-East Mediterranean region*.

In 2006, building on the conclusions and recommendations of this regional report, the working group launched a regional project focusing specifically on the issue of the independence and impartiality of the judiciaries in the south and east of the Mediterranean (except for Israel). EuroMed region

In its first phase (2006-08), this project focused on four of the region's countries: Morocco, Tunisia, Jordan and Lebanon. In each of these countries, the EMHRN organised a two-day seminar to assess and discuss the main problems affecting the independence and impartiality of the judiciary as well as the challenges to come and the reforms which have been – or still need to be – undertaken in order to strengthen the independence of the judiciary.

The seminar on the Lebanese judiciary took place in Beirut, Lebanon, on 10 and 11 March 2007. It gathered a large number of judges, prosecutors and other legal professionals including representatives of the different judicial bodies, lawyers, representatives of Lebanese and international NGOs and international institutions, as well as representatives of the European Union and of a number of member states<sup>4</sup>. In the aftermath of the seminar, the Working Group selected two Lebanese lawyers,

1 Detailed information on the EMHRN and its Working Groups is available at [www.euromedrights.net](http://www.euromedrights.net).

2 Since February 2009, the EMHRN Justice Working Group comprises: Bérangère Pineau (Solida, Lebanon); Zaha Al-Majali (Amman Centre for Human Rights Studies, Jordan); Emilio Gines (Federacion de asociaciones de defensa y promocion de los derechos humanos, Spain); Houcine Bardi (Comité pour le respect des libertés et droits de l'Homme, Tunisia); Merwat Rishmawi (Amnesty International); Amine Sidhoum (Collectif des familles de disparus, Algeria); Radwan Ziadeh (Damascus Centre for Human Rights Studies, Syria); Mette Appel Pallesen (Danish Institute for Human Rights, Denmark); Walid Nakib (Institut des droits de l'Homme, Beirut Bar Association, Lebanon); Nicola Colacino (Intercenter, Italy); Orlane Varesano (OMCT); Karim El Chazli (Cairo Institute for Human Rights Studies, Égypt); Asma Khader (SIGI, Jordan); Mohamed Amarti (Organisation marocaine des droits de l'Homme, Morocco); Kirsty Brimelow (Bar Human Rights Committee of England and Wales, UK); Mokhtar Trifi (Ligue tunisienne de défense des droits de l'Homme, Tunisia); Michel Tubiana (Ligue française des droits de l'Homme, France). More detailed information on the Working Group and its members is available at [www.euromedrights.net](http://www.euromedrights.net) under 'Themes/Justice'.

3 Mohammed Mouaqt and Siân Lewis-Anthony.

4 The minutes of the seminar (in Arabic, French and English) as well as the programme of the seminar are available at [www.euromedrights.net](http://www.euromedrights.net).



Maya Mansour and Carlos Daoud, to draft a national report on the independence and impartiality of the Lebanese judiciary, notably, but not only, based on the discussions held during the seminar<sup>5</sup>.

### **3. Report on the Independence and Impartiality of the Judiciary – “Lebanon”**

#### Background and objectives

The report on the “Independence and Impartiality of the Judiciary – Lebanon” aims to describe in detail the main features of the Lebanese judiciary, with particular focus on the fundamental problems affecting its independence and impartiality. The examples mentioned in the report illustrate the practical consequences that a lack of independence can have on the rights of citizens. It includes a series of detailed recommendations concerning the constitutional, legal and administrative changes that are required in order to achieve a level of judicial independence in accordance with international standards. The recommendations are primarily directed towards the Lebanese authorities who are requested to demonstrate genuine political will in order to achieve real and substantial progress in this area. Other recommendations are directed towards external actors and donors, including the European Union and civil society, whose role should not be underestimated.

The report is designed to become a resource tool for all actors in the judicial system, but also and essentially for Lebanese civil society organisations that wish to engage actively in the process of promotion and strengthening judicial independence. These organisations were involved in the Beirut seminar in March 2007 and in the drafting of this report and it is expected that they will now start or continue to promote the reform process<sup>6</sup>.

#### Methodology

In addition to their own experience as lawyers, the authors of the report have not only taken into consideration the content and conclusions of the discussions held during the Beirut seminar on 10 and 11 March 2007 organised by the EMHRN, but also reports already published when conducting their research. It is important to note that the report was written in September 2009 and that it therefore does not cover evolutions and changes that have occurred since then. The report was initially drafted in French, and subsequently translated into Arabic and English. The three versions are available on the EMHRN website<sup>7</sup>.

#### Outline

The report is divided into five parts. Part One is dedicated to the legal framework and structure of the Lebanese judiciary.

Part Two focuses on obstacles to the independence and impartiality of the Lebanese judiciary.

Corruption within the Lebanese judicial system is dealt with in Part Three.

Part Four tackles the specific role of lawyers.

Finally, Part Five briefly examines past and current reform projects of the Lebanese judiciary.

The report ends with a series of detailed recommendations directed at the Lebanese authorities, the European Union and the Lebanese civil society.

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<sup>5</sup> A similar project has been undertaken in Morocco, Tunisia and Jordan. The national reports on these three countries are also available at [www.euromedrights.net](http://www.euromedrights.net). Two similar reports on Egypt and Algeria will be published by the end of 2009.

<sup>6</sup> Following the publication of this report, the EMHRN intends to pursue its work at national level towards the strengthening of the independence and impartiality of the judiciary in Lebanon. A follow-up seminar was organised in September 2009 during which participants – members of the judiciary and NGOs – discussed the content and implementation of the conclusions and recommendations of the report.

<sup>7</sup> [www.euromedrights.net](http://www.euromedrights.net)



# I. THE LEGAL FRAMEWORK AND STRUCTURE OF THE LEBANESE JUDICIARY

The independence of the judiciary is a precondition to providing justice within society and protecting human rights. The lack of an independent judicial system jeopardises the rights and freedoms of citizens and renders them vulnerable to violations committed by the executive or legislative authorities or others holding power. An independent judiciary, by contrast, curbs arbitrariness, ensures non-interference and upholds the rights of individuals. Yet, judicial function cannot be realised without impartial, honest and competent judges who are able to render judgements in accordance with the law. Judges must be able to do so with complete impartiality and under no influence, whether material or moral, from any individual or institution regardless of the end sought by this influence, be it political, social, partisan, occupational, economic or otherwise. An independent judiciary distances judges from suspicion, guarantees the establishment of justice and equality in society and protects the course of justice.

Numerous international human rights instruments guarantee the right to an effective remedy before tribunals. Domestic laws on the independence of the judiciary also exist.

## 1. INTERNATIONAL STANDARDS

Most universal and regional human rights instruments guarantee the right to a fair trial by an independent and impartial tribunal. While those instruments do not solve all questions related to the notion of independence of the judiciary, they do provide some essential clarifications.

### 1.1. Binding international instruments

#### a. Universal Declaration of Human Rights<sup>8</sup>

The Universal Declaration of Human Rights (UDHR) provides in its Articles 7 to 11 the principles of equality before the law and of presumption of innocence. Article 10 provides that *"everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him"*.

<sup>8</sup> Adopted and proclaimed by the UN General Assembly Resolution 217 A (III) of 10.12.1948. See <http://www.ohchr.org/EN/UDHR/Pages/Language.aspx?LangID=en>

Though the UDHR is not a treaty, its provisions have acquired constitutional status. The Lebanese Constitution expressly provides in its Preamble that Lebanon *"is a founding and active member of the United Nations Organisation and abides by its covenants and by the Universal Declaration of Human Rights. The State shall embody thee principles in all fields and areas without exception"*.

Lebanon has also acceded to six out of the seven United Nations human rights conventions, including the International Covenant on Civil and Political Rights.

#### b. International Covenant on Civil and Political Rights<sup>9</sup>

Lebanon acceded to the International Covenant on Civil and Political Rights in 1972. Article 14 of the Covenant provides: *"All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. (...) But any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children (...)"*.

#### c. Other human rights treaties ratified by Lebanon<sup>10</sup>

- International Covenant on Economic, Social and Cultural Rights ;
- International Convention on the Elimination of All Forms of Racial Discrimination ;
- Convention on the Elimination of All Forms of Discrimination against Women ;
- Convention against Torture ;
- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment ;
- Convention on the Rights of the Child (Lebanon only ratified one of the two optional protocols).

<sup>9</sup> Adopted and opened for signature, ratification and accession by the General Assembly in its resolution 2200 A (XXI) of 16.12.1966 and entered into force on 23.03.1976 ; <http://www2.ohchr.org/english/law/ccpr.htm>

<sup>10</sup> <http://www2.ohchr.org/english/law/index.htm>



Table<sup>11</sup> of treaties ratified by Lebanon:

Treaties	State of treaties	Date of Signature	Date of Ratification/ Accession	Entry into force	Reservation
International Covenant on Civil and Political Rights	Accession		3.11.1972	23.03.1976	--
International Covenant on Economic, Social and Cultural Rights	Accession		3.11.1972	3.01.1976	--
International Convention on the Elimination of All Forms of Racial Discrimination	Accession		12.11.1971	12.12.1971	Article 22
Convention on the Elimination of All Forms of Discrimination against Women	Accession		21.04.1997	16.04.1997	Articles 9(2) 6(1)(c-f)(g) and 29(1)
Convention against torture	Accession		5.10.2000	4.11.2000	--
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Ratification		26.08.2008	22.12.2008	--
Convention on the Rights of the Child	Ratification	26.01.1990	14.05.1991	13.6.1991	--
Optional Protocol to the Convention on the Rights of the Child (armed conflicts)	Signature	11.2.2002			
Optional Protocol to the Convention on the rights of the Child (sale of children, child prostitution and child pornography)	Ratification	10.10.2001	8.11.2004	08/12/04	

It is worth underlining that Lebanon has not ratified the two Optional Protocols to the International Covenant on Civil and Political Rights, in particular the one allowing for the submission of individual complaints.

In addition to the treaties adopted in the framework of the United Nations, some regional human rights conventions reiterate substantially the same principles with regard to the independence of the judiciary, notably the European Convention for the Protection of Human Rights and Fundamental Freedoms, the African Charter on Human and People's Rights and the American Convention on Human Rights. However, these texts are not applicable in Lebanon.

The Arab Charter on Human Rights, adopted by the Arab League in 2004, requires the signatory countries to guarantee the right to have an effective remedy before tribunals and the right of equality before the law. Article 12 of the Charter provides that: "All persons are equal before the courts. (...) The States parties shall guarantee (...) every person subject to their jurisdiction the right to seek a legal remedy before courts of all levels." The Charter came into force in March 2008. Lebanon has not ratified it.

<sup>11</sup> Index of countries having ratified human rights treaties ([www.arabhumanrights.org](http://www.arabhumanrights.org)).





#### **d. Effect of treaties ratified by Lebanon in domestic law**

By virtue of the combined application of the preamble of the Lebanese Constitution and Article 2 of the Code of Civil Procedure, which recognises the supremacy of international treaties' provisions over those of ordinary law, international treaties ratified by Lebanon are applicable law upon publication in the Official Gazette.

Tribunals can therefore apply provisions included in ratified treaties each time that the domestic legislation is in contradiction with those standards in order to ensure the effective implementation of the rights of individuals. They thus take precedence over domestic ones, though the latter remain valid until they are harmonised with the terms of the convention in question.

### **1.2. Non binding international instruments**

#### **a. Instruments emanating from United Nations bodies**

- The United Nations Basic Principles on the Independence of the Judiciary<sup>12</sup> were drafted to assist States in ensuring and promoting the independence of the judiciary. Today, those principles have gained importance in the evaluation of judicial systems, particularly in the work of the international bodies concerned and some non governmental organisations.

Those principles deal with the following topics: Independence of the judiciary; freedom of expression and association; qualifications, selection and training; conditions of service and tenure; professional secrecy and immunity; discipline, suspension and removal.

- The Guidelines on the Role of Prosecutors<sup>13</sup> aim at assisting States in their tasks of securing and promoting the effectiveness, impartiality and fairness of prosecutors in criminal proceedings. They should be respected and taken into account by Governments within the framework of their national legislation and practice, and should be brought to the attention of prosecutors, as well as other persons, such as judges, lawyers, members of the executive and the legislature and the public

12 Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Milan, 26.08 to 06.09.1985) and endorsed by General Assembly resolutions 40/32 of 29.11.1985 and 40/146 of 13.12.1985, see <http://www2.ohchr.org/english/law/indjudiciary.htm>

13 Adopted by the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, Havana, Cuba, 27.08-07.09.1990, see <http://www2.ohchr.org/english/law/prosecutors.htm>

in general.

Paragraph 5 of the preamble states that prosecutors play a crucial role in the administration of justice and that rules concerning the performance of their responsibilities should promote their respect for and compliance with the above-mentioned principles, thus contributing to fair and equitable criminal justice and the effective protection of citizens against crime.

The 24 guidelines cover the following issues: qualifications, selection and training; status and conditions of service; freedom of expression and association; role in criminal proceedings; discretionary functions; alternatives to prosecution; relations with other government agencies or institutions; disciplinary proceedings and observance of the guidelines.

- The United Nations Basic Principles on the Role of Lawyers<sup>14</sup> state in their preamble that "(...) adequate protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession (...)". Besides independent and impartial judges and prosecutors, lawyers constitute the third fundamental pillar that secures the rule of law in a democratic society and guarantees the effective protection of rights.

Lawyers must enjoy the procedural guarantees provided for under international instruments and domestic law to play their role efficiently. In addition, the fair and effective administration of justice requires that they are free from all pressures and able to work without fear of harassment, attacks, intimidation or corruption.

#### **b. Principles and guidelines emanating from non state actors**

A certain number of associations and international organisations were involved in the drafting and adoption of documents to define the principles and guidelines that should guide the effective application of the concepts of independence and impartiality, including:

- The Bangalore Principles on Judicial Conduct adopted by the Judicial Group on Strengthening Judicial Integrity<sup>15</sup>.

14 Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27.08-07.09.1990, see <http://www2.ohchr.org/english/law/lawyers.htm>

15 Revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, Netherlands, 25-26.11.2002, see [http://www.judicial-ethics.umontreal.ca/en/textes%20int/documents/bangalore\\_ang.pdf](http://www.judicial-ethics.umontreal.ca/en/textes%20int/documents/bangalore_ang.pdf)



- The "Syracuse Draft Principles" on the independence of the judiciary<sup>16</sup>.

## 2. DOMESTIC STANDARDS RELATED TO THE INDEPENDENCE OF THE JUDICIAL SYSTEM

The Lebanese Constitution, on the one hand, and several legislative texts, on the other hand, are the main sources of provisions related to the independence and impartiality of the judiciary.

### 2.1. The Lebanese Constitution

The Lebanese Constitution is the reference text that defines the functioning of the Lebanese judicial system.

The second paragraph of the Constitution's Preamble states that Lebanon is a founding and active member of the United Nations Organisation and abides by its Charter, the Universal Declaration of Human Rights and the Covenants. The following paragraph provides that Lebanon is a parliamentary democratic republic based on the respect for public liberties. The fifth paragraph of the same Preamble states that the political system is based on the principle of separation, balance and cooperation amongst powers. By doing so, the Constitution enshrines the principle of balance between the three powers - judicial, legislative and executive - thus rejecting the predominance of one over the others.

Article 20 of the Constitution enshrines the independence of the judicial power which is essential to rendering justice. The principle of security of tenure of judges only appears in the French version of the text. Indeed, the Arabic version, which prevails over the French one, only mentions rules of "judicial guarantees" without specifying their content. The limits and conditions of those rules are determined by law.

These provisions of the Lebanese Constitution reflect the provisions of the relevant international instruments, in particular of Principle 1 of the Basic Principles on the Independence of the Judiciary which provides that: "*the independence of the judiciary shall be guaranteed by the state and enshrined in the constitution or the law of the country (...)*".

Overall, the provisions of the Lebanese Constitution affirm the right to an effective remedy before a tribunal. In theory, the Constitution thus complies

with international standards. In practice, however, the legislative and executive branches, as well as individuals comprising these branches, constantly interfere in the functioning of the judiciary. As a result, the Lebanese judiciary suffers from almost systematic violations of the principle of separation of powers by political officials and from the intrusion of politics in its affairs.

The Constitution has thus failed to specify safeguards and to establish a protection system, including *vis-à-vis* the legislator. The Lebanese Constitutional Council has nonetheless played a key role in affirming the guarantees of the independence of the judiciary by imposing some limits to the legislative power. The Constitutional Council thus struck down the Law of 12 January 1995<sup>17</sup> amending certain provisions of the Law on the Organisation of the Sunni and Shiite courts, on the ground that it contradicted several provisions of the Constitution, including Article 20<sup>18</sup>. Besides, when interpreting Article 20, the Constitutional Council considered that there was a close link between the independence of the judiciary and the legal guarantees provided to this end, without which independence would have no value<sup>19</sup>. Similarly, the Constitutional Council confirmed<sup>20</sup> that the legislative power could not derogate from the guarantees provided nor modify them, except to establish broader and more effective ones. Therefore, the legislator cannot weaken the guarantees of a right or fundamental freedom already granted under prior laws by repealing these guarantees without replacing them or by substituting them by weaker and less effective guarantees.

### 2.2. Legislative texts

While certain texts recognise the institutional independence of the judiciary, others question it.

#### - The Code of Civil Procedure<sup>21</sup>

**The principle of independence of the judiciary** is reaffirmed under Article 1 of the Code of Civil Procedure which provides: "*The judiciary is a power independent from other powers in the examination and resolution of lawsuits. Its independence shall not be limited except as provided in the Constitution*".

<sup>16</sup> They were prepared by a Committee of Experts entrusted by the International Association of Penal Law, the International Commission of Jurists and the Centre for the independence of prosecutors and lawyers, 1981.

<sup>17</sup> Act No. 4 of 26.01.1995.

<sup>18</sup> Decision No. 95/2 of 25.02.1995.

<sup>19</sup> Decision No. 5/2000 of 27.06.2000.

<sup>20</sup> Decision No. 99/1 of 23.11.1999, published in the Official Gazette No. 56 of 25.11.1999.

<sup>21</sup> Decree Law No. 90 of 16.09.1983



## - The law on the judiciary<sup>22</sup>

Article 4 of **the law on the judiciary** provides that the High Judicial Council « (...) *ensures the proper functioning of the judiciary, its dignity and its independence (...)* ». Article 44 of the same law specifies that “*judges are independent in the exercise of their duties and can only be transferred or dismissed in accordance with the provisions of this law*”.

However, other provisions of this Decree Law question the institutional independence of the judiciary, particularly by allowing the executive to appoint judges to certain 1<sup>st</sup> rank positions. In addition, it provides that 8 out of the 10 members of the High Judicial Council (Article 2), as well as the First President of the Court of Cassation (Article 26), the Attorney General to the Court of Cassation (Article 31), the President and the members of the Judicial Inspection Committee (Articles 100 et 101) are appointed by a decree of the Council of Ministers upon proposal of the Minister of Justice. Besides, Article 45 of that same law enshrines the subordination of prosecutors to the Minister of Justice and its Article 132 subjects them to the regime of State civil servants.

Similarly, **Article 143 of the law governing the organisation of the courts**<sup>23</sup> provides that the members of the Court of Justice are appointed by decree upon proposal of the Minister of Justice after consulting the High Judicial Council.

## - The Law on the status of the State Council (*Conseil d’Etat*)<sup>24</sup>

Article 4.3 of the **Law on the status of the State Council** provides that “*administrative judges are independent in the exercise of their duties. Any transfer, detachment or any other measure infringing their statutory situation shall only be made within the framework set by this law*”. Article 19.2 provides that “*the State Council Bureau ensures the proper functioning of the public service of administrative justice, its authority and its independence and takes appropriate decisions to that end*”. Under Article 7, a State Council judge can only be detached to a ministry, an administration or a public body with his consent. Detachment is decided by a decree of the Council of Ministers upon proposal of the Minister of Justice and the relevant Minister and after approval of the State Council Bureau. By subjecting detachments to their approval, administrative judges are protected from any abusive transfer in the exercise of their duties and their independence is thus guaranteed. Such protection is reinforced by the need for the State

Council Bureau’s approval before the detachment decree is issued since its decisions are based on objective considerations.

On the other hand, Article 5 of the Law provides that the President of the State Council is appointed by a decree of the Council of Ministers upon proposal of the Minister of Justice.

## - The Code of Criminal Procedure<sup>25</sup>

Article 419 of the Lebanese Penal Code provides: “*Anyone who asks a judge, verbally or in writing, to decide in favour or against one of the litigants will incur a fine of ..... pounds*”.

It follows from all the provisions above that, despite the affirmation of the principle of independence, the judiciary is in many ways directly under the executive’s authority and does not enjoy the independence it needs.

## 3. THE STRUCTURE OF THE LEBANESE JUDICIARY

In Lebanon, the structure of the judiciary is the result of the historical evolution of its legal institutions and the diversity of its legal sources. Lebanon was largely inspired by the French model for both its civil and administrative (State Council or *Conseil d’Etat*) courts. With regard to religious tribunals, on the other hand, it has preserved the existing structures inherited from Ottoman law or subject to developments from external sources.

### 3.1. Regular court system

#### a. Ordinary courts

Ordinary courts have general jurisdiction over civil and criminal cases. In principle, judges of these tribunals exercise their duties in full independence. They have security of tenure and thus can only be subjected to transfer, suspension, compulsory retirement or any other modification of their professional situation in specific cases and according to a procedure determined by law. The appointment, transfer and change of position of these judges are decided by a ministerial decree upon proposal or approval of the High Judicial Council.

▪ **Civil courts** are regulated by the new Code of Civil Procedure<sup>26</sup>, the law on the judicial system<sup>27</sup> and the law governing the organisation of the

22 Decree Law No. 150 of 16.09.1983

23 Decree No.7855/1961.

24 Decree No. 10434 of 14.06.1975.

25 Decree Law No. 340 of 01.03.1943.

26 Decree Law No. 90 of 16.09.1983.

27 Decree Law No. 150 of 16.09.1983.



courts<sup>28</sup>. There are three degrees of jurisdiction, which are:

- **First level courts: the First Instance Court**, also called Magistrates Court. This court is composed of either a single judge or a chamber of judges. Single judges have territorial jurisdiction over district cases (*Casas*), while chambers of judges are territorially competent for regional cases (*Mohafazats*).

- **Second level courts: The Court of Appeal** is competent to uphold or overturn first instance decisions. They are territorially competent for regions (*Mohafazats*).

- **The Court of Cassation:** Supreme court of the judicial order, it is based in Beirut. It comprises several chambers. The Court decides on the law and not on factual issues. However, if the appeal is allowed, it does not remit it to another court of appeal but re-examines the case and decides on the merits.

▪ **Criminal courts** are regulated by the new Code of Criminal Procedure<sup>29</sup> of 2001. There are two sorts of criminal courts:

- **Criminal courts adjudicating misdemeanours:** they comprise a single criminal judge in first instance cases, the Court of Appeal for misdemeanours in appeal cases and finally, the Criminal Chamber of the Court of Cassation. The single criminal judge can be seized directly. Conversely, appeals to the Court of Cassation are not axiomatic.

- **Criminal courts adjudicating crimes:** they comprise assize courts for first instance cases and the Criminal Chamber of the Court of Cassation for appeal cases. The case is first examined by an investigating judge and then by the chamber of accusation before it is decided by an assize court.

## b. Administrative courts

- **The Special Administrative Tribunal** no longer exists in Lebanon. Created by Decree Law No. 3/54 of 30 November 1954, it was abolished by Article 144 of Decree No. 10343/75 of 14 June 1975.

Act No. 227 of 31 May 2000 amending the law on the status of the State Council (*Conseil d'État*) provided for the establishment of a first level administrative tribunal in each region (*Mohafazats*) of Lebanon. The reorganisation of administrative courts should take effect following a decree of the Minister of Justice after approval of the State

Council Bureau. To date, this reform has not yet been implemented. For some, this delay is not only due to a shortage of administrative judges, but also to political reasons<sup>30</sup>.

- **The State Council (*Conseil d'État*)** based in Beirut, is currently the only administrative court in Lebanon. Created in 1924, it is regulated by Decree No.10434/75 of 14 June 1975, amended several times, notably in 1980<sup>31</sup>, 1993<sup>32</sup> and 2000<sup>33</sup>.

Since the 2000 amendments, the State Council comprises ten chambers. Headed by a President, it has about 45 judges, including 10 chambers' presidents and 35 counsellors. The State Council Bureau is responsible for supervising and monitoring the proper functioning of administrative courts. This Bureau is composed of the President of the State Council (President), the *Commissaire du Gouvernement* (Vice-President), the Head of the Judicial Inspectorate and the Presidents of the State Council Chambers (all members).

The role of the State Council is twofold: on the one hand, it presents its opinions on some administrative decisions to the executive and, on the other hand, it adjudicates administrative disputes between the State, legal persons of public law and individuals. The State Council has full jurisdiction<sup>34</sup>.

Administrative judges are not subject to the authority of the High Judicial Council but to that of the State Council Bureau which plays an identical role. Except for this, in principle, administrative and judicial judges have the same status.

## 3.2. Religious courts

Religious courts constitute a major specificity of the Lebanese judicial system. The heterogeneous social structure of Lebanon, which is composed of multiple religious minorities recognised by Article 9 of the Constitution<sup>35</sup>, has given rise to an extreme variety of personal status laws.

The law authorises religious confessions to manage their affairs in an autonomous manner. To ensure that this principle is protected and applied, Article

30 Dr Ghaleb Ghanem, President of the State Council. Rights, guarantees and duties of administrative judges – The Status of administrative judges – Thailand, November 2007.

31 Act No. 28 of 27.09.1980.

32 Act No. 259 of 06.10.1993

33 Act No. 227 of 31.05.2000.

34 There are two types of appeals, *ultra vires* appeals and appeals requesting full jurisdiction of the State Council. The State Council is however not competent for disputes regarding blatant unlawful acts emanating from an incompetent administrative body (*voies de fait*) or illegal dispossession of real property by the authorities (*emprise irrégulière*)

35 Article 9 of the Constitution: "Freedom of conscience is absolute. By rendering rendering homage to the Almighty, the State respects all creeds and guarantees and protects their free exercise provided that public order is not disturbed. It also guarantees to individuals, whatever their religious allegiance, the respect of their personal status and their religious interests".

28 Decree Law No. 7855/61 of 16.10.1961.

29 Act No. 328 of 02.08.2001.



19 of the Constitution grants the heads of legally recognised religious communities the right to consult the Constitutional Council to examine the constitutionality of laws related to personal status, the freedom of belief and religious practice and the freedom of religious education.

Order 60 L.R of 1936<sup>36</sup> defined the legally recognised religious confessions in Lebanon. According to Article 4 of this text, recognised religious confessions were responsible for drafting all provisions relating to the personal status of the members of their communities. This entitled them to legal personality and gave them the right to dispense justice. Under the above-mentioned order, once drafted, the provisions should in principle have been submitted to the Parliament's approval. In practice, this was not always the case. This matter was referred to the Plenary Assembly (*assemblée plénière*) of the Court of Cassation which decided that the non compliance with that obligation did not impede the legal recognition of the provisions at stake. Thus, the Court of Cassation acknowledged that the provisions included in these codes constituted the transcription of customs, traditions and usage of the said religions and that the ecclesiastical courts could apply them as long as they respected public order and the fundamental laws of the State and of religions<sup>37</sup>.

Some provisions of Order 60 L.R were nevertheless opposed by the Muslim communities. They were thus excluded from its scope by Order 53 L.R, taken in 1939.

Order 60 L.R also recognised the existence of other religions governed by ordinary law which freely organise and manage their own affairs within the limits set by civil laws (Article 14).

### a. Ecclesiastical courts

Ecclesiastical courts are regulated by the law on the powers of Christian and Jewish religious authorities of 2 April 1951. To date, these courts are not part of the judicial structure of the Lebanese State. They are established by decrees issued by the high authorities of each of those religions who exercise direct control over them.

Amongst other things, ecclesiastical courts decide on matters related to marriage, divorce, child custody and alimony. They have no jurisdiction over successions since successions of non-Muslims come under the jurisdiction of civil courts.

<sup>36</sup> Order taken by the French High-Commissioner for Lebanon and Syria, De Martel, on 13.03.1936, approving the status of religious faiths.

<sup>37</sup> Decision of 12.11.1955, The Lawyer's Review (*La revue de l'avocat*) 1956 ; Decision of 17.11.1960, The Lawyer's Review (*La revue de l'avocat*) 1957; Decision of 13.2.1962, The Legal Edition (*L'édition juridique*) 1962. See also Ibrahim Traboulsi, The control of the Plenary Assembly of the Court of Cassation over doctrinal and legal provisions, The Judiciary Review (*La revue de la justice*) of 1997, No. 3 and 4, and Sami Mansour, The protectionist role of civil and religious justice in matters of personal status, The Judiciary Review (*La revue de la justice*), 1998, No. 3 and 4.

Judges sitting on ecclesiastical courts are religious or lay people. Though they generally are legal practitioners, they do not have the same status as civil judges and are not subject to the statute of the judiciary or to the authority of the High Judicial Council. Their salaries are not paid by the State but by their communities who appoint them.

- **Catholic rites**<sup>38</sup>

For each catholic rite there is a unified first instance tribunal for the entire Lebanese territory and only one court of appeal. It is however possible to appeal first instance decisions directly before the Rota courts in Vatican. The cassation appeal can be presented either before the Court of Cassation (Civil Chamber) or before the Rota in the Vatican.

- **Orthodox rites**<sup>39</sup>

The Orthodox have a first instance tribunal in each archdiocese, and one single court of appeal for the entire Lebanese territory. The cassation appeal can be presented before the Civil Chamber of the Court of Cassation.

In all cases, both for Catholic and Orthodox rites, decisions are not enforceable until they are confirmed at the appeal stage, even when parties waive their right to appeal.

### b. Shari'a courts

Shari'a courts are regulated by the Law of 16 July 1962 for the Sunnis and Shiites and by Decree No. 3473 of 5 March 1960 for the Druze. The organisation of the Islamic judiciary is considered to be indivisible from the State, which obliges them to abide by the legislation issued by the Chamber of Deputies. Thus, the law on the Druze personal status<sup>40</sup> was created by that Chamber.

Unlike ecclesiastical courts, Shari'a courts can also decide on successions.

Judges sitting in Shari'a courts are religious people. They are generally legal practitioners. Unlike their Christian counterparts, they are not paid by their respective communities but are State civil servants. They are appointed by a decree of the Council of Ministers but are not subject to the Judges statute or to the authority of the High Judicial Council.

- **Sunni and Shiite courts**

The Sunnis and Shiites have, for each rite, a first instance tribunal in each district (*Casas*) and a Supreme tribunal in Beirut which renders appeal decisions. Cassation appeals are presented before the Plenary Assembly (*assemblée plénière*) of the

<sup>38</sup> Law of 01.10.1991

<sup>39</sup> Law of 16.10.2003

<sup>40</sup> Law published on 24.02.1948.



Civil Court of Cassation.

- **Druze courts**

For the Druze, there is one first instance tribunal in each district (*Casas*) and one Supreme Court of appeal in Beirut. The Plenary Assembly (*assemblée plénière*) of the Civil Court of Cassation has jurisdiction over cassation appeals.

### **c. Women in religious courts**

Despite the importance of personal status issues for women, they are not authorised to become judges in religious courts, whether they are Christian or Muslim.

### **d. The issue of the independence of religious courts**

In practice, the way religious courts (ecclesiastical and Shari'a ones) function is detrimental to litigants because they apply laws in an inconsistent manner, they are poorly adapted to daily life demands, they lack flexibility, and any development that would meet the needs of litigants is impossible. This situation is aggravated by the fact that judges sitting on those courts are often religious people whose lives are different from laypersons<sup>41</sup>.

Judgements issued by religious court are not rendered nor enforced in the name of the People of Lebanon. This is contrary to Article 20 of the Constitution according to which: "*All rulings and decisions by all courts shall be rendered and enforced in the name of the People of Lebanon*". The Court of Cassation has nevertheless considered that "*the pronouncement of a judgement which is not in the name of the People of Lebanon, but rather in the name of the religious tribunal that rendered it, does not constitute a violation of a fundamental public order principle*"<sup>42</sup>. It is nevertheless worth emphasising that religious authorities have no enforcement powers, and decisions rendered by religious courts have to be submitted to the enforcement departments in accordance with civil laws in force.

The Court of Cassation has identified certain principles as public order principles. Those principles must therefore be respected by religious courts; if they do not, their judgements

run the risk of being annulled. They include provisions regarding the confirmation of damages<sup>43</sup>, the composition of courts<sup>44</sup> and the rights of the defence<sup>45</sup>. Thus lawyers have the right to represent and assist their clients before religious courts and any limitation or restriction of this principle must be exceptional and strictly limited.

With regard to jurisdiction rules, the Court of Cassation has bravely tried to reduce the jurisdiction of religious courts in favour of the jurisdiction of civil courts for certain questions regarding personal status. It has thus adopted a general principle according to which civil courts have, in principle, general jurisdiction and religious courts have limited jurisdiction. It has thus considered that the Law of 2 April 1951 on ecclesiastical courts was in fact a special law and that in case of a conflict in the interpretation of the jurisdiction of those courts, the jurisdiction of civil courts should be given precedence since they have general jurisdiction. In another case, the Court annulled a decision of the Maronite Court of Appeal on the ground that the religious court had no jurisdiction over the question of a child's legitimacy when the parents were not bound by a marriage contract<sup>46</sup>.

In a recent case, the juvenile court judge of Beirut suspended the decision of a Shari'a court on the ground that Law No. 422/2002<sup>47</sup> was a special law, the provisions of which must be applied in all cases, even if it makes them prevail over any other general text in case of conflict. Based on the interest of the minor, the judge considered that the judgement rendered by the religious court was not binding on the juvenile courts responsible for taking appropriate measures for children at risk<sup>48</sup>. This decision triggered heated outcry from the media and opposition from the religious authorities concerned, on the ground that it violated their legal competence. The Ministry of Justice had to issue a statement<sup>49</sup> defending the position of the juvenile court judge, whose decision was eventually confirmed by the Court of Cassation.

With regard to positive or negative conflicts of jurisdiction, Article 95 of the new Code of Civil Procedure<sup>50</sup> provides the Court of Cassation, sitting in Plenary Assembly, with the jurisdiction

41 Intervention of Judge Nada El Asmar, Minutes of the seminar organised by the Euro-Mediterranean Human Rights Network, "The independence and impartiality of the judiciary – Lebanon", Beirut, Lebanon 10-11.03.2007.

42 Decision No. 9/91 (Plenary assembly).

43 Decision No. 9/91.

44 Decision No. 7/85 and Decision No. 25/96.

45 Decision No. 9/91, Decision No. 5/97 (Dissenting Opinion of Judge Mounah Mitri).

46 Judgment No. 1/91 of 24.10.1991.

47 Law No. 422/2002 on protection of children in conflict with the Law or in danger.

48 Decision of 24.10.2007. In this case, the decision of the Shari'a court to grant custody of a minor child with mental problems to her father presented important risks for the child.

49 Al Nahar Journal, 27.10.2007.

50 Decree Law No. 90/83 of 16.09.1983.



to decide on requests regarding the designation of the competent authority. According to the same new Code of Civil Procedure, the Court of Cassation is also granted jurisdiction to decide on the objections raised against final or binding decisions of religious courts on grounds of lack of jurisdiction or violation of a public order provision.

If it is true that the multiplicity of legislations and courts regarding personal status matters has contributed to the respect of freedom of belief and religious practice, it has also subjected citizens to a variety of laws and courts that define their rights and duties according to their religion. This is against the principle of equality among citizens enshrined in Article 7 of the Constitution, according to which "*all Lebanese are equal before the law*". Furthermore, certain laws drafted by religious authorities are in contradiction with international human rights conventions ratified by Lebanon which, as such, are part of domestic law and apply to all citizens regardless of their community.

Thus, Article 16 of Law of 2 April 1951 on ecclesiastical courts provides that "*any marriage contracted in Lebanon by a Lebanese citizen belonging to one of the Christian confessions or to a Jewish confession before a civil authority is void*". As for the Law of 1962 on the organisation of Shari'a courts, it provides that Muslim authorities have jurisdiction over marriage formalities. The law of 1948 for the Druze community provides that any marriage performed before another authority than the "sheik Akl" or the religious judge, or his delegate, is void. Those texts contradict the provisions of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights related to freedom of thought, belief, marriage, and the right to a family life despite the fact that the Lebanese State ratified this treaty.

It is worth noting that according to Articles 10 and 17 of the aforementioned Order 60 L.R., the personal status of Lebanese people who do not belong to a religious confession or who belong to a religious confession that is not legally recognised, is subject to ordinary law. Similarly, Article 25.2 of the same Order subjects civil marriages contracted by Lebanese citizens abroad to Lebanese civil law, to which the legislator intended to include provisions relating to marriage upon publication of Order 60 L.R. However, to date there are only fragmentary provisions regarding personal status under Lebanese civil law. This is contrary to the provisions of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights regarding freedom of thought, belief, marriage, and the right to a family. Besides, it also violates the principle of

equality among citizens.

In practice, some Lebanese persons who wish to escape the provisions of religious laws contract civil marriages abroad. The State recognises the validity of such marriages and, if need be, the Lebanese civil judge applies the law of the country where the contract was concluded. However, this adjustment does not necessarily solve all the issues resulting from the marriage or related to it and it is sometimes impossible, or very difficult, to escape from the application of religious laws and the jurisdiction of religious courts.

### **3.3. Special courts**

Special courts in Lebanon comprise the High Court of Justice, competent to try Presidents and Ministers of the Republic, the Justice Council and military tribunals.

The two types of courts which most directly violate fundamental freedoms and human rights are the Justice Council and the military tribunals. Indeed, the jurisdiction of these courts and the way they work violate the provisions of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights, though they are both included in the Lebanese Constitution. The laws that regulate these two types of courts are, to a certain extent, unconstitutional, notably with regard to their independence, the guarantee of fairness in judgements and the rights of the defence.

#### **a. The High Court of Justice**

The High Court of Justice, established under Article 80 of the Constitution, is competent for judging the Presidents and Ministers of the Republic. It comprises seven deputies elected by the Chamber of Deputies and eight of the highest ranked Lebanese judges, selected according to their rank in the judicial hierarchy or, in case of equal ranks, in their order of seniority. They meet under the chairmanship of the highest ranked judge. Decisions of condemnation by the High Court are decided by a majority of ten votes.

In practice, the High Court has never exercised its duties since no Minister or President has been prosecuted since its creation. This inability to act illustrates the submission of the judiciary to the executive power. Lebanese political officials are used to solve conflicts through compromises while hiding, by mutual agreement, the irregularities committed by one another. In addition, it is difficult to prosecute Presidents and Ministers for crimes or violations of the Constitution as



such a decision requires the votes of two-third of the deputies in accordance with Articles 60 (President of the Republic) and 70 (Ministers) of the Constitution.

### **b. The Justice Council**

The Justice Council is the highest court in Lebanon. It is presided over by the first President of the Court of Cassation. The four other members are the four highest ranked judges sitting on the Court of Cassation.

The Justice Council has jurisdiction over breaches of external and internal security of the State. It is often considered as a political court because of its organic link with political authorities: the Council is referred to by decree taken by the Council of Ministers which decides on the cases referred to it. An investigating judge with broad powers is then appointed by the Minister of Justice for each case referred. The bill of indictment is presented to the Council by the Attorney General without any possibility of appeal.

Under Article 366 of the Code of Criminal Procedure, as amended in 2005, decisions of the Justice Council cannot be appealed in any way, except if the trial is revised before the Justice Council itself. This lack of effective appeal constitutes a blatant violation of the provisions of the International Covenant on Civil and Political Rights. In 1997, after the review of the report submitted by Lebanon on the application of the said Covenant, the Human Rights Committee noted in its recommendations to the Lebanese government, the non-conformity of this practice with the provisions of the Covenant<sup>51</sup>.

Recently, the Court of Cassation declared itself incompetent to decide on an appeal based on the alleged misconduct of the judges of the Justice Council. Such decision is not surprising since the members of the Court of Cassation before whom the appeal was lodged, necessarily included the accused judges themselves.

### **c. Military courts**

The role of military tribunals waned during the civil war as the State was marginalised by militias of all sorts who had established their own tribunals, which sometimes issued the death penalty. Once peace was restored, State military tribunals

gradually grew stronger. However, under public opinion pressure, a revision draft of the law on military tribunals was prepared under the auspices of the commission of modernisation of laws of the Ministry of Justice to limit their jurisdiction to the military only, thus excluding civilians. This revision process has however only slightly reduced the powers of military courts a little, while it has complemented their organisation.

The organisation, the composition as well as the functioning of military courts violate the principles of a fair trial.

Military courts are regulated by Law No. 24 of 13 April 1968. They come under the control of the Ministry of Defence, which exercises over them in a manner similar to authority that the Ministry of Justice exercises over civil courts.

#### **• The structure of the military judiciary**

In Lebanon, military courts comprise:

- A single military judge in each department of Lebanon.
- One permanent military tribunal based in Beirut. According to Article 6 of the Military Code, this tribunal comprises two chambers:
  - one criminal court adjudicating misdemeanours that exceed the competence of single military judges. This chamber is composed of one military officer (at least a lieutenant colonel) appointed as President, assisted by 2 judges (of whom only one is a civil judge and has been trained as a judge, the other one being a military officer who does not necessarily have a legal background);
  - one criminal court adjudicating crimes, composed of one military officer appointed as President (whichever his background is), one ordinary judge and 3 military officers (of a lower rank than the President). When the court decides on a case involving a member of domestic security, public security, national security or customs, it also comprises two military officers from the same sector as the defendant. In case several defendants appear for the same case, it is necessary to ensure that each sector of each defendant is represented by a military officer of the same sector. The decisions of this chamber can be appealed before the military Court of Cassation under the conditions required by law.

<sup>51</sup> Recommendations of the United Nations Human Rights Committee, April 1997: "The committee considers that some aspects of the State party's legal system do not conform with the provisions of the Covenant. In this context, it points in particular to the fact that decisions passed by the Justice Council are not subject to appeal, which is contrary to Article 14, paragraph 5 of the Covenant".





- The military Court of Cassation, located in Beirut. It is presided over by a civil judge of the Court of Cassation appointed to this office by the President of the Court of Cassation.

- **Proceedings before military courts**

Proceedings applied by military courts are simplified proceedings. Officers use manuals to fulfil their duties. Hearings are in principle public and assistance by a lawyer is provided by the law, but he can be denied access for one month by the President of the court on “disciplinary” grounds that are not defined by any criterion. In such cases, an officer will be appointed to defend the accused, without requiring the latter’s consent. The rights of the defence are radically limited. The military prosecution can appeal a decision to withdraw all charges made by the investigating judge, whereas the accused cannot appeal the charges against him. Military courts render their judgements based on a printed questionnaire related to the charges, aggravating circumstances, exculpatory pleas or extenuating circumstances to which the members of the tribunal provide very brief answers. Given the exceptional nature of proceedings, the courts are not required to explain the grounds for their decisions. Judgements are rendered at the closing of the trial.

Military courts apply the Code of Criminal Procedure in addition to the Code of Military Justice, though some of the provisions of the latter contradict the former. Besides, proceedings before military courts are not subject to monitoring by the civil judicial system. The competence of military courts to examine any act constituting a “threat to national security” or “incitement to conflict”, brings under their jurisdiction numerous civilians once the military prosecutor so qualifies the charges. Military courts have jurisdiction not only over the crimes, misdemeanours and offences committed by members of the military as defined under the Military Criminal Code, but also over any crime or offence or any other act to which members of the military are associated directly or indirectly. This therefore applies to any civil servant of security bodies, but also to any person associated with a criminal act committed by members of the military. This “blank jurisdiction” (*compétence en blanc*) has nevertheless been reduced by the exclusion of crimes and offences committed by law enforcement officials (except for the army) outside the exercise of their function, and of acts committed by members of the judicial police, when they are linked to the exercise of their ordinary powers, from the jurisdiction of the military courts in 1977.

- **The lack of independence of military courts**

As all judges sitting on military courts are appointed by the Council of Ministers their independence can be questioned.

Military judges composing military courts are subject to their military hierarchy and are thus not independent and impartial judges. The United Nations Human Rights Committee, in its recommendations to the Lebanese authorities in April 1997<sup>52</sup>, expressed concerns with regard to the extent of the jurisdiction granted to military courts.

### 3.4. Other courts, committees and special councils

A variety of exceptional and special judicial courts was created alongside ordinary courts. This development was favoured by Article 84 of the Code of Civil Procedure which, departing from the Constitution, provides that special courts can decide, on an exceptional basis, over disputes by virtue of specific laws and regulations.

These special courts notably include urgent proceedings (*référés*) and land courts<sup>53</sup>, the Arbitration Council, the Customs Committee<sup>54</sup>, the Labour Arbitration Council<sup>55</sup>, expropriation commissions<sup>56</sup>, the Customs Law published in 1974, the Benefits Fund for teachers exercising in private institutes, the Committee for teachers dismissed on non disciplinary grounds, the court in charge of bank liquidation matters<sup>57</sup>, the High Banking Committee<sup>58</sup>, the Committee in charge of state and private schools disputes<sup>59</sup>, the Income Tax Committee<sup>60</sup>, the Property Tax Committee for built properties<sup>61</sup>, the Transfer Fees Committee<sup>62</sup>, the Committee for leisure centres fees<sup>63</sup>. These courts, bodies and committees are in principle presided over by a judge from the judicial system

52 Recommendations of the United Nations Human Rights Committee, April 1997: “(...) *the broad scope of the jurisdiction of military courts in Lebanon, especially its extension beyond disciplinary matters and its application to civilians. It is also concerned about the procedures followed by these military courts, as well as the lack of supervision over the military courts’ procedures and verdicts by the ordinary courts. The State Party should review the jurisdiction of the military courts and transfer the competence of military courts, in all trials concerning civilians and in all cases concerning the violation of human rights by members of the military, to the ordinary courts*”.

53 Decision No. 186 of 15.03.1926.

54 Decision No. 54/422, Decree 59 /2868.

55 Labour Law of 23.09.1946.

56 Law No. 58/1991.

57 Law enforced by Decree No. 79/1663.

58 Law No. 67/28.

59 Law of 15.06.1956.

60 Decree Law No. 59/144.

61 Law of 6219/17.

62 Decree Law No. 59/146.

63 Decree Law No. 67/66.



or comprise at least such judge among their members.

### 3.5. The Public Prosecution Office

#### a. Composition and hierarchical organisation of the Public Prosecution Office

The Lebanese magistracy comprises sitting judges and standing judges, also called Public Prosecution Office.

The Public Prosecution Office represents the interests of society before civil and criminal courts. In criminal matters, the role of the Public Prosecution Office is to initiate public action, that is to say, to press criminal charges against the alleged author of an offence. The prosecutors must abide by the territorial jurisdiction of the courts to which they belong.

The Public Prosecution Office is governed by a very strict hierarchy. Each member of a public prosecutor's office must obey his superior within the same public prosecutor's office. The public prosecutor's offices at the appeal courts are headed by an Attorney General (*Procureur général*), who is directly under the Minister of Justice and is assisted by General Advocates (*avocats généraux*). The public prosecutor's office at the Court of Cassation is headed by the State's Prosecutor (*Procureur de la République*) who is assisted by General Advocates (*avocats généraux*). He has jurisdiction over the entire country but is based in Beirut. Finally, at the top of the hierarchy is the Minister of Justice, although he is not a member of the Public Prosecution Office. He has authority over all members or officers of the Public Prosecution Office through the State's Prosecutor (*Procureur de la République*).

#### b. Monitoring of the prosecutors' work

Prosecuting judges receive written or oral orders from the State's Prosecutor and must abide by them under the principle of hierarchical subordination. There are however two limits to that principle. First, prosecutors and general advocates have the power to prosecute without the order, or even against the order of their superior. Prosecution initiated without instructions or against instructions received is legitimate and valid. Second, if subordinates must comply with the instructions they have received in their written conclusions, they can express their personal opinions during the hearing, and orally request

charges that are different from their written conclusions.

As a party to the trial, the prosecuting judge can appeal any order of the investigating judge, the chamber of accusation (*chambre d'accusation*) or the criminal judge before the investigating chamber (*chambre de l'instruction*). Similarly, he can appeal any decision of the assize courts, be it of acquittal or conviction.

#### c. Role of the Public Prosecution Office in preliminary and primary investigations, and arrest and detention powers.

The mission of the police is to search and record offences, gather evidence and discover the authors and hand them over to the courts. The judicial police work under the supervision of the State's Prosecutor (*procureur de la République*) and Prosecutors General (*procureurs généraux*).

Where a person is caught in flagrante delicto, the Prosecutor General goes without delay to the crime scene and undertakes all necessary measures. He can prevent anyone from leaving the crime scene until the end of operations. The prosecutor can, if the exigencies of the investigation are such, put anyone under police custody if there are strong indications that the person committed the crime. The person held under police custody cannot be detained for more than 48 hours. However, before the 48 hours expire, the prosecutor can extend the measure for a further 48 hours maximum (Articles 32 and 42 of the Code of Criminal Procedure or CCP). Overrunning this time period constitutes in itself a violation of the rights of the individual concerned (Article 367 of the CCP).

Where a person is caught in flagrante delicto, the police are also authorised to place anyone in police custody during the investigation if there are indications that the person committed or participated in the commission of an offence. The prosecutor must be informed of that measure from the beginning of the detention. The person held under police custody cannot be detained for more than 48 hours, which can be extended for a further 48 hours maximum. The judicial police may question the detainee; the detainee has the right to remain silent. Such questioning takes place without a lawyer.

During the preliminary investigation, the judicial police are authorised, where a person is caught in flagrante delicto, to place in police custody any person in relation to whom there are indications that he/she has committed the offence. The Prosecutor General must be informed about this



measure at the very beginning of the custody. The person in custody cannot be detained more than 48 hours. The custody can be extended for another 48 hours maximum by a decision of the Prosecutor General. The judicial police can interrogate the person in custody who is allowed not to answer the questions. The interrogatory can take place without a lawyer.

In other case than *flagrante delicto*, and during the preliminary investigation, the judicial police can place in custody any person in relation to whom there are indications that he/she has committed the offence (Art. 47 of the CPP), following a clear decision of the Prosecutor General at the court of appeal. The person in custody cannot be detained more than 48 hours. The custody can be extended for another 48 hours maximum by a decision of the Prosecutor General.

The individual caught red-handed can be arrested by any police agent (Art. 41 of the CCP) and even by a private individual (Art. 45 of the CCP).

Individuals held under police custody must be immediately informed of all guarantees and advantages they are granted under the Code of Criminal Procedure. These guarantees and advantages must also be noted in the record (*procès-verbal*), and signed by the individual concerned (Articles 32 and 47 of the CCP).

With regard to arrests, the investigating judge can, if the exigencies of the investigation require it, place anyone in protective custody, according to strict conditions specified by law (Article 107 of the CCP). In case of misdemeanours, the suspect can only be maintained under protective custody for a maximum of two months, according to Article 108 of the CCP. In case of felonies, protective custody can last six months and can be extended by a maximum of a further six months, by a decision of the investigating judge. Exceptionally, in case of felonies, relating to drugs or breach of national security or public order, protective custody is not limited in time.

Since April 2009, the Special Tribunal for Lebanon, established to deal with the assassination of Prime Minister Rafic Hariri and others, was officially seized of the matter and the individuals detained within the framework of this case were formally transferred under its authority. The pre-trial judge of the Special Tribunal ordered the release of the four generals detained; subsequently, the latter and their lawyers criticised the Lebanese judicial authorities for having held them in protective custody for three years and eight months. They requested sanctions against the State's Prosecutor and the investigating judge of the case and called for their resignation.



## II. THE LIMITS OF THE INDEPENDENCE OF THE JUDICIARY

The independence of the judiciary is a current, if not continuous, debate in Lebanon since it is constantly threatened, directly or indirectly, by various phenomena - structures, institutions, governmental bodies - that have a greater or lesser impact on the organisation of the judiciary depending on political, social, historical, cultural, ideological, or even religious factors. According to a UN corruption assessment<sup>64</sup>, six out of ten respondents "strongly agreed" or "agreed" that the Lebanese judiciary is not independent in its decision-making. A few cases which have had extensive media coverage, have led public opinion to question the trust they put in the judiciary. That being said, threats to the independence of the judiciary do not always and necessarily come from the outside, but also, and more insidiously, from within the judicial apparatus.

### 1. THE HIGH JUDICIAL COUNCIL

The law on the judiciary, promulgated by Decree Law No.150 of 16 September 1983, provides, in its Article 4 amended in 1985, that the HJC "*shall ensure the proper functioning of the judiciary, its dignity, its independence, and the proper functioning of the courts and their related important decision-making*". Yet, the reality shown by the composition of the HJC and its functioning is not favourable to the principles of independence.

#### 1.1. Composition of the High Judicial Council

Pursuant to the law on the judicial system as amended several times<sup>65</sup>, the High Judicial Council is composed of ten members:

- Three ex officio members:
  - the first President of the Court of Cassation, President of the HJC;
  - the Attorney General at the Court of Cassation, Vice-President of the HJC;
  - the President of the Judicial Inspectorate.
- Two judges elected for three years by all the presidents and associate judges of the Court of Cassation among the Chamber Presidents of the Court of Cassation.

<sup>64</sup> Report of the World Bank on the legal and judicial sector assessment in Lebanon (2003).

<sup>65</sup> Decree Law No.150 of 16.09.1983, amended by Decree Law No. 389 of 21.12.2001

- Five members appointed by decree upon proposal of the Minister of Justice (Article 2 of the law on the judicial system):
  - one judge chosen from among the Chamber Presidents of the Court of Cassation;
  - two judges chosen from among the Chamber Presidents of the different courts of appeal ;
  - one judge chosen from among the Chamber Presidents of the first instance courts;
  - one judge chosen from among the presidents of tribunals or heads of departments of the Ministry of Justice.

The current composition of the HJC results from an amendment of the law on the judicial system adopted in 2001. This amendment aimed at implementing the principle contained in the 1989 Taif Agreement on the direct election of a "number" of HJC members from among judges. Since the Taif Agreement did not specify the number of members to elect, the political authorities voluntarily reduced the scope of the reform by limiting the number of elected members to two out of the ten members<sup>66</sup>. This small number raised numerous critics among deputies<sup>67</sup> who considered that the "number" mentioned in the Taif Agreement was necessarily bigger than two<sup>68</sup>. The second criticism raised by this reform was that eligible judges had to be Chamber Presidents of the Court of Cassation.

Therefore, the 2001 reform is not likely to bring fundamental changes to the degree of independence and working methods of the HJC. It is worth noting that neither the judiciary as such nor judges in their individual or collective capacities have taken a public stand in the discussion of this reform.

#### 1.2. Powers of the High Judicial Council

The HJC is in charge of ensuring the independence of judges and the law grants it considerable powers with regard to the management of judicial affairs. Still, the Minister of Justice enjoys a certain number of prerogatives allowing him, under certain circumstances, to interfere in the management of judicial affairs.

Under Article 5 of the law on the judicial system, the HJC has, in addition to the power of issuing decisions and opinions regarding laws and regulations, other powers, including that

<sup>66</sup> Article 2 of the law on the judicial system No. 150/83 amended by Law No. 389 of 21.12.2001.

<sup>67</sup> Such as Hussein Hussein, former President of the Chamber and sponsor of the Taif Agreement.

<sup>68</sup> Minutes of the Chamber of Deputies, Meetings of 19 and 26.01.2004.



of deciding the composition of the disciplinary council for judges.

The most important prerogative of the HJC is that of preparing the list of judicial appointments, permutations and delegations, whether individual or collective ones. This document is however only enforceable once approved by the Minister of Justice. In case of a conflict between the Minister and the HJC that cannot be settled amicably, the HJC decides again and takes a final decision at a majority of at least seven members. This decision should in principle be followed by a decree upon proposal of the Minister of Justice.

The prerogative of deciding disputes between the HJC and the Minister of Justice with regard to the table of judicial promotions results from an amendment to the law on the judicial system adopted in 2001. Before that, this prerogative belonged to the Council of Ministers. While this amendment is in principle of great importance, its practical scope is limited in practice. It is indeed difficult to gather a majority of seven members against the Ministry of Justice when the executive branch appoints eight out of the ten members of the HJC. The practice since 2001 has also shown that there were other major obstacles to realising the new powers of the HJC, including the obligation to publish the list of appointments adopted by the HJC. Indeed, the decree publishing the list of appointments must be signed by the President of the Republic, the Prime Minister and the Minister of Justice; this grants them the power to oppose or at least to delay this publication<sup>69</sup>.

Many members of parliament have repeatedly expressed fears that such an amendment is purely formal<sup>70</sup>. When the controversy resurfaced in 2004<sup>71</sup>, the Minister of Justice promised to submit a draft requiring the Minister of Justice to publish the decisions of the HJC within a certain time line<sup>72</sup>. To date, this commitment, which was in any case insufficient since it did not apply to the other authorities signing the decree, has not been materialised. In fact, administrative constraints, linked to the interference of politicians, have repeatedly obstructed the decisions made by the HJC with regard to judicial appointments.

Once the proposed judicial appointments, permutations and delegations are adopted by the HJC, there is no more collective transfer of judges in principle. Yet, the reality reflected by the composition as well as by the functioning of the HJC does not promote the principles of independence. Furthermore, the principle of security of tenure of judges, as stated in the Constitution, does not grant full protection to the judges against arbitrary decisions that could be taken with regard to them, especially in the two following cases:

- The Minister of Justice can decide, upon approval of the HJC, on certain delegations if they are considered to be necessary for the needs of the administration of justice (Article 20 of the law on the judicial system). The executive may thus decide, with the approval of the HJC, to transfer certain judges known for not being docile in order to neutralise or punish them. Such attacks are regularly denounced<sup>73</sup>.
- Article 95 of the same law does not allow any right of appeal against decisions of the Higher Judicial Council with regard to the competence of judges, including dismissal for abuse of authority. The HJC can therefore transfer judges or even remove them from office, because of their alleged incompetence, outside of any disciplinary procedure. The law does not guarantee any possibility for judges to either challenge or oppose such transfers.

### 1.3. Meetings and decision-making mechanisms of the High Judicial Council

The HJC can legally convene only if at least six of its ten members are present (Article 7 of the law on the judicial system). With the exception of cases requiring specific majority votes, HJC decisions are reached by majority vote of the members present. If the vote is a tie, the President of the session casts the deciding vote (Article 8 of the law on the judicial system).

### 1.4. Lack of financial autonomy

In Lebanon, the budget allocated to the Ministry of Justice to run the judiciary amounts to between 0,7% and 0,8% of the State's general budget<sup>74</sup>.

69 Nizar Saghieh, Research Notes, Critical reading of the judicial reform discourse in Lebanon after Taif, Lebanese Centre for Policy Studies, Beirut, 2008.

70 Minutes of the Chamber of Deputies, 20<sup>th</sup> legislative round, 1<sup>st</sup> ordinary session, 3<sup>rd</sup> meeting of 28-30.05.2002.

71 MP Michael Daher notably claimed: "In the last few years, there has been a certain independence of the judiciary. The last word for anything regarding the magistracy such as transfers, appointments and delegations now belongs to the HJC. However, the decree which is supposed to enshrine what has been decided by the High Judicial Council still depends on the will of the Minister of Justice who was not given a deadline to sign it", see the Minutes of the Chamber of Deputies, 20<sup>th</sup> legislative round, 2<sup>nd</sup> ordinary session, 3<sup>rd</sup> meeting of 04.11.2004.

72 Minutes of the Chamber of Deputies, 20<sup>th</sup> legislative round, 2<sup>nd</sup> ordinary session, 3<sup>rd</sup> meeting of 04.11.2004.

73 Mohammad El Moghrabi, Al Nahar Journal, 06.08. 2008.

74 Association of the High Courts of Cassation of the Countries sharing the use of the French language (AHJUCAF, *Association des Hautes Juridictions de Cassation des pays ayant en partage l'usage du français*)



The budget of the judiciary is part of the budget of the Ministry of Justice. The Ministry of Justice is therefore in charge of the financial issues related to the judiciary. The executive branch is also responsible of the administrative management of courts.

The High Judicial Council is thus not competent regarding the determination of the judiciary's budget or the administration of courts. As a result, the judiciary has no financial or administrative independence.

### **1.5. Criticism addressed to the High Judicial Council**

Over the years, the HJC has attracted much criticism, partly because of its practice of grading, moving and transferring judges. The criticisms raised concern particularly the lack of transparency and the obvious lack of clear and objective criteria, which put the judges in a situation of dependence *vis-à-vis* this institution.

Thus, with regard to the grading system, it seems that the decisions of the HJC are not based on the elements contained in the individual files of judges, but primarily on the opinion of the first president of the court where the judge concerned works. Moreover, it appears that the personal files of judges are not actually complete. Some judges have in fact claimed that their files only included the decree of their appointment, although they participated, for example, at the request of the Ministry of Justice, in training sessions in Lebanon and abroad and were awarded the corresponding certificates. These elements are thus not brought to the HJC's attention when it evaluates judges.

The protection of the independence and integrity of the judiciary requires that procedures of selection, transfer and promotion of judges are conducted on the basis of objective and transparent criteria. However, if the table of judicial appointments, permutations and delegations is actually established by the HJC, the very structure of this body, of which eight of the ten members are appointed directly by the Council of Ministers upon proposal of the Minister of Justice, allows the executive power to exercise a clear influence over the process.

Thus, throughout their careers, judges are not immune to arbitrary decisions that may be imposed to punish their independence of mind or their possible lack of submission to political authorities in one or more specific cases. Experience shows that the promotion of judges by the HJC does not only result from seniority or personal merit, but is largely based on personal

relationships and recommendations. The lack of a text – and of clear, objective and transparent criteria – governing the conduct of their careers has drawn criticism from many judges<sup>75</sup>.

The case of Judge Fawzi Khamis illustrates the obstacles that may arise during the career of a judge. In 2004, Judge Fawzi Khamis, acting as a single criminal judge, decided a number of acquittals in cases initiated by the Prosecution<sup>76</sup>. His judgements, though they were welcomed by the Lebanese society and media, displeased the then President of the Republic. During the development of the table of judicial appointments, permutations and delegations, the President of the HJC expressly asked the first president of the court where Judge Khamis worked to remove him from office. Judge Khamis was actually transferred.

Moreover, given the communitarian nature of the Lebanese political system, the composition of the HJC, which is based on the rule of parity between Muslims and Christians, encourages those members to lobby for the appointment of judges close to them for important duties, without properly taking into account their respective capabilities and skills. The powers and duties of the HJC, which consist in evaluating, promoting and possibly revoking judges, are only exercised fully for judges who have no protection. This is a violation of the principles of equality and impartiality of the judiciary. Some judges have called directly on the HJC to change its practice and decide on appointments and transfers in accordance with the independence and integrity of judges<sup>77</sup>.

75 Judge Ali Younis: "(...) *These systems constitute, in reality, effective means of pressure on judges; a pressure which is exercised in many cases. Thus, for instance, there are judges who work several years in remote, disadvantaged areas for no reason apart from the absence of an intervention to transfer them to more suitable areas*", Report on the independence and impartiality of the Lebanese judiciary: problems and challenges, presented at the seminar organised by the Euro-Mediterranean Human Rights Network on 10-11.03.2007.

76 Including trials against the company Solidaire for obstruction to the sea, and against a member of the opposition party for belonging to a secret association following the demonstrations of 07.08.2001.

77 Judge Souheil Aboud: "*I conclude by sincerely calling on the new HJC to intelligently apply the text on the capacity of judges and decide general judicial transfers under the unique slogan of integrity and competence! 'The judge that is needed where he is needed' and this, according to an objective rectification system, free from any interference by any authority, to which this Council will commit itself to make it difficult to overcome in future formations*", Call for the establishment of a judges' association in Lebanon, Al Nahar Journal, 04.07.2006.



## 2. The status of judges

### 2.1. Selection

The selection of judges is done primarily through an entrance examination to the Institute of Judicial Studies. According to Article 59 of Decree Law No.150/83, the Minister of Justice evaluates the need to recruit new judges and specifies the required number after consulting the High Judicial Council. Incidentally, the selection of judges is done by lateral recruitment among members of the Bar, a practice that has been used occasionally by the HJC to fill the shortage left by the retirement or resignation of a number of judges since the end of the civil war in 1990.

Candidates for the examination must meet the following requirements<sup>78</sup> :

- Be of Lebanese nationality and have possessed such nationality for at least ten years;
- Enjoy all their civil rights, and have no conviction for crime or felony;
- Be free from diseases or disabilities that would prevent them from exercising their duties;
- Hold a Lebanese law degree;
- Speak Arabic and either French or English;
- Be aged under 35 years old at the time of the written examination.

Article 68 of the same decree also allows the appointment of any candidate who obtained a State doctorate in law as a trainee judge at the Institute of Judicial Studies, without passing the entrance examination, under a decree issued upon proposal of the Minister of Justice after approval of the HJC.

The HJC holds the entrance examination, defines its content and terms and establishes an examination panel exclusively composed of judges. Applications are reviewed by the HJC which then publishes the list of candidates invited to take the examination.

Selection criteria include criteria related to the intellectual ability and legal knowledge of the candidates, which are assessed through oral and written exams, and to their personality, their ability to exercise the judicial function and their integrity, which are assessed during interviews with each candidate. Candidates who pass the examination are appointed trainee judges by decree issued upon proposal of the Minister of Justice after approval of the HJC<sup>79</sup>.

<sup>78</sup> Article 61 of Decree Law No.150/83, Law on the judicial system.

<sup>79</sup> Article 64 of Decree Law No. 150/83.

## 2.2. Training/appointment

Trainee magistrates follow a professional training cycle of three years at the Institute of Judicial Studies, which include academic courses and traineeships. The trainee judge attends hearings, examines case files and prepares draft decisions that he presents to the president of the tribunal for evaluation. The training cycle is divided in semesters, and each course undertaken during the semester is completed by an exam. In addition to the mark of the exam *stricto sensu*, a mark assessing the traineeship and the general conduct of the judge is given.

At the end of the three-year training, the Board of the Institute of Judicial Studies prepares a list of those who pass and presents it to the HJC together with proposals concerning each trainee judge and his ability to perform his duties. The HJC decides on the ability of the magistrate to perform his duties; the final appointment is made by decree upon proposal of the Minister of Justice.

The Institute of Judicial Studies is however neither independent nor autonomous. It suffers from a lack of material, logistical, financial and human resources and from an inefficient training programme. Yet, prospective judges must be competent individuals with integrity, they should have adequate legal training and hold relevant legal qualifications, and should have access to continuing professional education throughout their careers so that they can adapt to the development of laws and technology. Many judges themselves have expressed the wish to change some aspects of the initial training, both in form and content, and establish continuing legal education. In the hope of making the functioning of the Institute of Judicial Studies more efficient, the Ministry of Justice has launched a plan to improve the selection of candidates and modernise the content of the training. Several international partners are working in collaboration with the Ministry on this project<sup>80</sup>.

The two major objectives of the reform of the Lebanese Institute of Judicial Studies, launched in 2003, are thus to improve the recruitment process but also to make continuing education mandatory for the 450 Lebanese judges in office.

In practice, most judges use traditional methods

<sup>80</sup> A cooperation agreement was concluded between the *École nationale de la magistrature* (National School of the Judiciary) in France and the Lebanese Institute of Judicial Studies.

A project called "reinforcement of the capacity of the Ministry of Justice – supporting professionalism" led by the agency of International cooperation (ACIJURIS), also supports the institutional reinforcement of the Institute of Judicial Studies, of the Committee of legislations and consultations, of the Commission of litigation and of the Bar of Beirut. This project offers continuing education to the different actors on the field (judges, and prosecutors, clerks, public notaries, experts, forensic surgeons and lawyers....)



to renew their knowledge, bearing in mind that their workload does not allow them to devote much time to this and that it is therefore difficult for them to bring their knowledge up to standard in specialised areas.

## **2.3. Ranks, retirement and remuneration**

### **a. Ranks**

The career of judges is organised according to a ranking system. Judges allowed to perform their duties after their training at the Institute of Judicial Studies automatically reach the first rank. Subsequently, they pass automatically to the next rank every two years.

Judges are assigned to different courts according to their rank. No further distinction exists between judges irrespective of their functions, specialisations or experience. Thus the law sets no objective criteria for evaluating judges, nor does it set guidelines for assignments. The way the HJC has been dealing with appointments and promotion, without using any objective criteria, has attracted much criticism on the grounds that the guarantees of judges are not preserved.

### **b. Retirement**

All judges must retire at 68 years old.

### **c. Remuneration**

The remuneration of Lebanese judges includes a monthly salary plus a quarterly allowance paid by the Judges Solidarity Fund. To date, the remunerations are as follows:

- 3<sup>rd</sup> year trainee judge: 900.000 L.L. per month (434 €);
- early career judge: 1.900.000 L.L (915 €) per month, plus a quarterly allowance of 1.500.000 L.L. (722 €);
- mid-career judge: 3.000.000 L.L. per month (1.445 €), plus a quarterly allowance of the same amount;
- judge of the highest rank: up to 4.900.000 L.L. per month (2.360 €), plus a quarterly allowance of 4.500.000 L.L. (2.167 €).

150.000 L.L. (72 €) is automatically added to the monthly salary and the quarterly allowance every two years.

Financial security is supposed to protect judges against the temptations of corruption, but in general, the remuneration of judges is considered inadequate and arouses the dissatisfaction of many judges.

The Judges Solidarity Fund, established by Decree Law No. 52/83 of 29 July 1983, benefits all judges, including trainee judges and retired judges and their families. The fund also reimburses hospitalisation, schooling and university costs of judges' children.

To ensure the independence of individual judges and of the institution, the question of judges' remuneration and benefits should, in principle, be free from arbitrary interference by the executive. However, as it stands, the salaries of judges and of all judicial civil servants are included in the annual budget submitted by the executive to Parliament, without asking the HJC to determine it or even consulting the HJC.

## **2.4. The principle of security of tenure of judges**

Under Article 44 of the law on the judicial system, judges are in principle independent in their office and can only be transferred or removed in accordance with the law.

However, under Article 48 of this law, the judge can, with his agreement, be transferred to an administrative post, by decree taken by the Council of Ministers upon proposal of the Minister of Justice, after approval of the HJC. Article 20 provides that the Minister of Justice, after approval of the HJC, can decide certain delegations if they are judged necessary. It should however be stressed that Article 95 of the law on the judicial system undermines the affirmation of the principle of security of tenure of judges as it allows the HJC to remove a judge from his office, without resort to any disciplinary proceedings. The law does not permit judges to appeal such decisions. Therefore, judges are not immune from arbitrary decisions that may be imposed to punish their independence of mind or their possible lack of submission to political authorities.

## **2.5. Women in the judiciary**

Women play a significant role in the Lebanese judiciary; they began to join the judiciary more than forty years ago. To date, women account for 186 of the 551 judges of the Lebanese judiciary, that is about 34% of the body. At the last four





entrance examinations to the Institute of Judicial Studies, organised from 2002 to 2005, women were the majority of the successful candidates in the competition<sup>81</sup>. During the coming years, given the large number of men who will retire, the proportion of women in the judiciary will increase, to such extent that they should, according to the forecasts of the Ministry of Justice, eventually reach a 60% of all judges. Already, women hold important positions, including President of the Military Court of Cassation, investigating judges, Prosecutors General, President of the chamber of accusation, single criminal judge, President of the Assize Court and member of the HJC.

At the State Council, the number of female judges is equivalent to that of men.

However, there are currently no female judges in religious courts. The Lebanese State is unable to impose on religious courts the requirement to comply with the international conventions prohibiting discrimination against women that it has ratified.

## 2.6. Disciplinary measures

Under Article 98 of the Law on the judicial system, the Judicial Inspectorate controls the proper functioning of the judiciary and the work of judges. The Inspectorate also implements the disciplinary powers provided by the law *vis-à-vis* judges.

### a. The Judicial Inspectorate

The Judicial Inspectorate consists of one president, four inspectors general and six inspectors, all appointed by decree issued by the Council of Ministers upon proposal of the Minister of Justice<sup>82</sup>. The inspectorate shall exercise its powers under the supervision of the Minister of Justice.

The President and the four inspectors general form the Judicial Inspectorate Council, which is convened by its President. This Council can decide to refer to the Disciplinary Council, if deemed necessary by the investigation. The Judicial Inspectorate Council may also propose to the Minister of Justice to suspend the judge referred to the Disciplinary Council<sup>83</sup>.

The composition of the Judicial Inspectorate, and in particular the appointment process of its president and members by the government, allow the possibility of political interference which

is likely to adversely affect the decisions of this body and of the Disciplinary Council.

### b. The Disciplinary Council

According to Article 83 of the law on the judicial system, judges can be brought before the Disciplinary Council for “*any breach of professional duty, honour or dignity or courtesy*”. Such breaches include unjustified absence, delay in the adjudication of pending cases, unjustified discrimination between the parties and delay in delivering judgement. The law does not, however, provide a detailed list of breaches, their severity or the corresponding penalties, leaving the door open to arbitrariness.

#### Appointment and composition of the Disciplinary Council

The Disciplinary Council is exclusively composed of judges, namely a Chamber President of the Court of Cassation, who chairs the Disciplinary Council, and two Chamber Presidents of the Court of Appeal. The members of the Disciplinary Council are appointed by the President of the High Judicial Council at the beginning of each year.

The President of the Judicial Inspectorate, or his deputy, shall serve as *commissaire du gouvernement* at the Disciplinary Council.

#### Proceedings before the Disciplinary Council

Generally, disciplinary proceedings provide adequate safeguards for judges. The President and members of the Disciplinary Council can be challenged under the conditions applicable to all judges. Full defence rights are guaranteed by law to any judge brought before the Disciplinary Council. The accused judge may appoint a lawyer or another judge to assist him with his defence. Hearings of the Disciplinary Council are not public. Decisions must be reasoned.

Decisions of the Disciplinary Council may be appealed, either by the judge concerned or by the President of the Judicial Inspectorate, before the High Judicial Disciplinary Commission. The Commission consists of the President of the High Judicial Council, or his deputy, and four members appointed at the beginning of each year by the HJC.

The publication of the file examined before the Disciplinary Council is prohibited, and only final decisions ordering a dismissal may be made public.

81 2002 : 18 women, 6 men; 2003 : 22 women, 15 men; 2004 : 18 women, 14 men; 2005 : 6 women, 3 men.

82 Art. 100 and 101 of Decree-Law No.150/83.

83 Art. 106 and 90 of Decree-Law No.150/83.



## Disciplinary measures

Disciplinary measures that can be ordered comprise: warning, reprimand, stopping any promotion for two years, demotion, suspension with pay restraint for a maximum period of a year and dismissal with the suppression of the right to benefits.

Besides, the President of the HJC can, without any disciplinary proceedings, admonish a judge. The Attorney General at the Court of Cassation, the first Presidents of Appeal Courts and the Prosecutors General at the Appeal Courts can do the same for judges under their administrative authority.

Finally, according to a recent revision of the law on the judicial system, the HJC can now dismiss any judge if it considers that he is no longer entitled to exercise his judicial functions, provided that a majority of eight of the ten members of the HJC agrees, and without having to consult or get the approval of the Minister of Justice.

## **2.7. Liability of judges**

### **a. Civil liability of judges**

According to Article 741 of the Code of Civil Procedure, the State may be liable for acts performed by judges in exercising their functions. Civil liability is possible in case of miscarriage of justice, fraud, bribery and misconduct. Suits are brought before the Plenary Assembly of the Court of Cassation, based on a request to that effect with supporting documents. The judge in question can intervene voluntarily in the proceedings to present his point of view. In addition, he must abstain from participating in the examination of any legal case concerning the party who sued him.

If the complaint is substantiated, the State is held civilly responsible and liable for damages granted because of the facts that led to the accusation of the judge. It then has a right of recourse against the offending judge.

### **b. Criminal liability of judges**

Judges can in principle be held criminally responsible and the Lebanese Criminal Code lists a number of specific crimes related to the status of judge including illegal arrest, the acceptance of bribes, kickbacks, bribery or direct or indirect corruption, discrimination or misuse of quality. Moreover, the judge who has committed a misdemeanour or felony is criminally liable, and

the status of judge may, in some cases, constitute an aggravating condition.

However, to protect judges in the exercise of their functions against inappropriate or unfounded accusations, the law provides exceptional rules of jurisdiction in case of a misdemeanour or felony allegedly committed by a judge. According to Article 44 of the law on the judicial system, the Plenary Assembly of the Court of Cassation has jurisdiction over misdemeanours and felonies involving judges or members of the Public Prosecution Office under the Court of Cassation and over those involving Presidents of Appeal Courts, Prosecutors General at those courts and investigating judges. The Criminal Chamber of the Court of Cassation has, in turn, jurisdiction over crimes and offences allegedly committed by other judges.

## **2.8. Freedom of expression, association and assembly of judges**

### **a. Principles and reality**

Article 15 of the Civil Servants Regulations<sup>84</sup> prohibits civil servants from holding an office prohibited by the laws and regulations in force, in particular from taking strike action or inciting others to go on strike, or from being part of professional organisations or trade unions or from launching collective petitions related to the public sector. The prohibition of forming a professional trade union, even if it does not expressly target judges, also concern them since they are also have the status of civil servants.. The corresponding penalty is enshrined in Article 340 of the Lebanese Criminal Code, according to which civil servants bound by a public law contract can be demoted if they stop their work or agree to do so, or if they resign under circumstances such that they disrupt the functioning of one of the public services. Article 44 of the law on the judicial system reinforces this prohibition by stating that all claims that judges might have must be submitted to the High Judicial Council.

In principle, judges, like all other Lebanese citizens, must enjoy freedom of expression, of association and assembly, as long as they behave in a way that would preserve the dignity of their position and the independence, impartiality and integrity of the judiciary when they exercise these freedoms. In practice, even if there is a discussion about whether the prohibition in Article 15 of the Civil Servants Regulations applies solely to professional organisations and trade unions or

<sup>84</sup> Decree-Law No. 112 of 12.06.1959 on the General Status of Civil Servants amended by Decree-Law No.15703 of 06.03. 1964 and Law No. 144 of 06.05.1992.



also includes associations governed by the law on associations of 1909, judges are in fact, if not by law, denied the right to form associations, trade unions or to belong to a political party. Failure to respect the rights of judges to freedom of association is a flagrant violation of their independence. It violates a right guaranteed under Article 13 of the Lebanese Constitution and subject to no restrictions<sup>85</sup>, and also contradicts Principles 8 and 9 of the UN Basic Principles on the Independence of the Judiciary<sup>86</sup>.

In this regard, the Code of Judicial Ethics issued by the Ministry of Justice in 2005, which establishes eight basic principles governing the judiciary (independency, impartiality, integrity, moral courage, modesty, loyalty and dignity, competency and diligence) says nothing about the right of judges to form associations although it is supposed to implement the Bangalore Principles. It is worth noting that there is one association called the "League of Former Judges", which includes retired judges and only deals with their interests.

### **b. Historical overview of collective actions of judges and current situation**

Since the mid-20<sup>th</sup> century, the Lebanese judiciary has seen many protest movements for the improvement of material and professional conditions of judges but also for a greater independence of the judiciary:

- In the 1940s, a group of judges signed a statement demanding the improvement of moral and material conditions of the profession. The protest movement clashed with the hierarchy of the judiciary and led to no result<sup>87</sup>.
- In 1969, a number of judges formed an association, the Judicial Studies Society, whose goal was to establish a competent judiciary and put an end to political interferences in the functioning of the judiciary, and especially in the appointments and transfers of judges. The Judicial Studies

Society, which sparked off the indignation of the judiciary had to cease its activities after the transfer of its leader, Judge Nassib Tarabay<sup>88</sup>.

- In the early 80s, some judges, grouped together as an executive committee, launched, in the form of a petition, a list of demands including, in particular, the transformation of the judiciary into a responsibility (an "authority") and not a job, the amendment of all legal provisions contrary to the Constitution and the election of the members of the High Judicial Council among judges. Again, the leader of the movement, Judge Gabriel Méouchi, was transferred and the appointments of the other judges were accelerated in order to quickly stop the activities of the committee<sup>89</sup>.
- In 1982, the movement gradually took the form of a judicial committee which, once established, convened all judges at a general assembly. The assembly supported the claims made by the committee, which included in particular: the respect for the independence of the judiciary in accordance with the Constitution, the repeal of all legal provisions contrary to the Constitution, the exclusive role of the HJC in the monitoring and treatment of judges' affairs, the financial autonomy of the judiciary, the improvement of the material situation of judges. The negotiations failed and the judges decided in April 1982, for the first time in the history of the Lebanese judiciary, to cease work until their demands were met<sup>90</sup>. Lawyers of the Bar Association of Beirut supported the judges. The HJC, in turn, condemned the movement and called on judges to resume their work threatening them to otherwise apply the Law of Judicial Reorganisation<sup>91</sup> that allows the HJC to dismiss judges without notice<sup>92</sup>. Following the intervention of the HJC, judges were divided between strikers and non-strikers.
- After the civil war in 1990, the deterioration of the material situation of judges, including their declining wages, pushed judges to send a petition to the authorities denouncing their material conditions and threatening collective resignation if there was no improvement of the situation.

85 "Freedom of expression, both written and oral, freedom of assembly and freedom of association are all guaranteed by law".

86 Principle 8: "In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary"; and Principle 9: "Judges shall be free to form and join associations of judges or other organisations to represent their interests, to promote their professional training and to protect their judicial independence".

87 Article of Tarek Ziadé, former president of the Judicial Inspectorate Council: "Preliminary attempt in the history of collective actions of Lebanese judges after the independence", Al Nahar Journal, 10.07.2006.

88 *Idem*.

89 Nizar Saghie and Samer Ghamroun, Collective actions of judges in Lebanon.

90 Nizar Saghie and Samer Ghamroun, *idem*.

91 Law No. 49 of 06.09.1965.

92 The statement issued by the HJC denounced "negative behaviours contrary to judicial traditions", Al Nahar Journal of 31.03.1982, 01.04.1982 and 15.04.1982.



- In 1997, about 300 judges signed a petition concerning a series of professional and material demands. The first of these demands required that "the HJC enjoy all the features of independence both morally and materially; so that it will take charge of all matters related to judges such as appointments, transfers and general organisation, be allocated a private budget that it can use for the smooth functioning of the judiciary, including to award salaries suited to the judicial profession (...)". After the HJC issued a statement supporting the demands made by the judges in their petition, nearly 200 judges met in February 1998 to also support the HJC whose position attracted widespread criticism and vilification campaigns in the media.
- In 1999, 16 judges called up to do their military service drafted a memorandum in which they challenged this call. Over 260 judges then signed a petition of support which was submitted to the HJC. The movement did not lead to anything as the 16 judges concerned eventually responded to the call<sup>93</sup>.
- In autumn 2005, the mandates of five out of the ten members of the High Judicial Council expired, but political strife prevented the appointment of their successors by the Council of Ministers. The President of the HJC accordingly convened a General Assembly of Judges in May 2006 during which a day of strike of judges was announced. This movement characterised by the media as the "rebellion of judges" remained however without consequences<sup>94</sup>.

With the sole exception of the Judicial Studies Society, established in 1969 as an association, which received a receipt of registration from the Ministry of Interior, collective actions of the Lebanese judiciary never led to change at the institutional level. This has led some judges to call for the creation of an association of judges able to take initiatives where the HJC procrastinate in carrying out its functions<sup>95</sup>. Recently, a number of Lebanese judges have begun to discuss the possibility of establishing such an association<sup>96</sup>. Many however show reluctance as they claim that the emergence of an association would show a lack of solidarity with the HJC at a time when many criticisms from the media and politicians against the judiciary should compel judges to unite around the HJC. But the principle of an association of Lebanese judges is supported by

several civil society organisations who believe that collective actions of the judiciary will only lead to tangible and conclusive results if judges establish a union or a professional organisation independent from the political power<sup>97</sup>.

### **3. POLITICAL, RELIGIOUS AND MEDIA INTERVENTIONS**

#### **3.1. Political interventions at the institutional level**

Politicians never cease to interfere in the work of the Lebanese courts. Accounts on this point are many; the first president of the Court of Cassation and former president of the HJC, Judge Antoine Khair, himself addressed this issue in a speech in 2006<sup>98</sup>. The former president of the High Judicial Council, Nasri Lahoud, declared in 2002 that "the independence of the judiciary in Lebanon is a pure utopia, because justice is only an instrument in the hands of politicians for them to interfere"<sup>99</sup>.

##### **a. In the functioning of the Constitutional Council**

The appointment of half of the Constitutional Council by the Chamber of Deputies and of the other half by the government allows these two powers to select judges that are close to them. As a result, members of the Constitutional Council are politically influenced and its independence and impartiality are thus compromised.

Two cases that stirred up the Lebanese public opinion further illustrate the attacks on the independence of the Constitutional Council:

- In April 1997, the resignation of the President of the Constitutional Council, Judge Wajdi El Mallat, the unexplained resignation provoked numerous reactions as many saw there a direct link with the pressures and interferences suffered by the Constitutional Council. The two Bar Associations of Beirut and Tripoli declared a one-day strike, considering that the resignation resulted "without doubt from the pressures exerted on the Council

93 Al Safir Journal, 20.12.1999 and 23.12.1999.

94 Tarek Ziadé, *idem*.

95 Judge Souhail Abboud, "Call for the formation of an association of judges in Lebanon", Al Nahar Journal, 04.07.2006.

96 Nizar Saghieh and Samer Ghamroun, *idem*.

97 Fadi Abdallah, "Till the real uprising of judges of Lebanon", Al Nahar Journal, 19.06.2006.

98 Speech delivered on 08.06.2006: "Why am I in the position I am in today? Why did I accept? I accepted in the hope that the restoration of the independence in the country will complete its cycle, and that justice will take its independence back in all its fullness. So I promised, but unfortunately, the status quo is not favourable. Having by my side united ranks of judges, I say 'Take your hands off justice. Let her out of the sludge of small politics and free herself from those who try to maintain her in a state of subordination to politicians'", Al Nahar Journal, 09.06. 2006.

99 Al Safir Journal, 14.11.2002.



in the framework of parliamentary recourses”, and called for “preserving this fundamental institution from political pressure”<sup>100</sup>. During a media interview, the resigning president explained that the judiciary is only “theoretically” independent, and that the executive has the wild desire of running the judicial profession, especially as some judges wallow in a mentality of subordination. In this case, the conflict between the members of the Constitutional Council and the authorities concerned involved the admissibility of certain electoral appeals and the failure of the Ministry of Interior to hand in the original minutes for the Council to carry out its review; The minutes had been burnt by the Ministry<sup>101</sup>.

- In August 2003, the mandates of five out of the ten members of the Constitutional Council expired while none of their successors were appointed. Under the Council’s Rules of Procedure<sup>102</sup>, these five members continued to perform their duties pending new appointments. As they still hadn’t taken place two years later, their functions officially terminated, which led to a *de facto* cessation of the activities of the Constitutional Council. Several months later, the President of the Republic however convened the Constitutional Council – an initiative that was interpreted by many as an interference in the affairs of this institution and a violation of the principle of separation of powers<sup>103</sup>. Moreover, the President of the Constitutional Council, Judge Amine Nassar, though he was one of the five outgoing members, supported that stance and called on all Council members to meet. The five non-outgoing members then rejected the call considering that since he had terminated his function, he could no longer convene the Council. According to information provided by the press, the outgoing judges went back on their decision to terminate their functions due to significant pressure exerted on them<sup>104</sup>.

- In 2005, Parliament legislated to defer all appeals before the Constitutional Council “until [the Council] is complete”<sup>105</sup>, which *de facto* put an end to the work of the Council. A group of parliamentarians submitted an action for annulment before that same Constitutional Council

which finally repealed the law as a violation of the Constitution<sup>106</sup>.

Political interference in the activity of the Constitutional Council, up to the non-appointment of its members, has nevertheless led to the *de facto* paralysis of that institution.

## **b. Within the High Judicial Council**

The interference of the executive – and of the political class in general – in the functioning of the High Judicial Council is remarkable given the important role played by the HJC in the Lebanese judicial system. These interferences can be illustrated by numerous examples, such as the appointment of Judge Nasri Lahoud, brother of the President of the Republic, as President of the HJC in 2002, or the non-appointment in 2006 of new members to replace outgoing members. This situation, which resulted from the conflict between the President of the Republic and the Prime Minister, paralysed the work of the HJC for a long time.

The crisis resulting from the non-issuance of the decree of judicial appointments and transfers in 2006 revealed the magnitude of the pressure and political interference in the affairs of the judiciary, in particular with regard to the HJC. In this case, the President of the Republic refused to sign the list of appointments drafted unanimously by the HJC and already signed by the Prime Minister and the Minister of Justice. Because of this political deadlock, there were 100 young graduate judges of the Institute of Judicial Studies with no appointment in 2008<sup>107</sup>. In October 2008 Judge Ralph Riachi resigned from the HJC to protest against the non-implementation of the appointments and transfers decided on by the HJC and against the fact that more than 100 graduate judges, that is three successive classes of the Institute of Judicial Studies, could not exercise their judicial functions in the absence of appointments, even though the Lebanese courts faced a backlog of pending cases because of the lack of judges<sup>108</sup>. This resignation prompted many reactions and has been interpreted by many observers as an indication of the institutional crisis that has shaken the judicial profession in Lebanon. In March 2009, following an agreement between different political parties, a new appointment and

100 Joint statement of the two Bars, Al Nahar Journal, 05.04.1997

101 Some members of the Constitutional Council called for the prosecution of the Minister of Interior because of the differences between the original minutes and the photocopies conform to the originals submitted by the Ministry to the Council, see Judge Salim Azar, 15.05.1997.

102 Article 7 of Decree No. 516 of 06.06.1996.

103 For instance, the parliamentarian and lawyer Robert Ghanem, head of the administration and justice committee at the Chamber of Deputies considered that the call of the President of the Republic constituted “a violation of usages and a flagrant interference in the affairs of this legal institution (...) and that requesting judges to resume their duties (...) was itself a violation of the Constitution and of the principle of separation of powers” Al Nahar Journal, 02.07. 2006.

104 Al Nahar Journal, 07.07.2006.

105 Law No. 679 with only one article, Official Gazette, Annex No.30, 20.07.2005.

106 Decision No.1/ 2005 of 06.08.2005, Official Gazette, Annex No. 34, 11.08.2005.

107 The then Minister of Justice, Charles Rizk saw in the abstention of the President of the Republic “an archetypal example of political interference in the affairs of the judiciary and a flagrant violation of the principle of separation of powers”, Journal Al -Nahar, 10.03.2007.

108 Ralph Riachi indicated in his letter of resignation: “Whereas I was elected by my colleagues on the Court of Cassation and I took the oath to ensure, in all my work, the smooth functioning, the dignity and independence of the judiciary, I therefore, taking the foregoing into account and for the reasons cited, submit my resignation from the High Judicial Council “.



transfer project drafted by the HJC was finally approved and published by the government, i.e. about three years late. The political conflict over the appointment of the President of the Judicial Inspectorate however still persists.

In its April 1997 recommendations on Lebanon, the UN Human Rights Committee expressed concern about the independence and integrity of the Lebanese judiciary, in particular concerning the appointment rules of judges, including of the members of the HJC. The Committee thus called on Lebanon to review urgently the measures governing the appointment of members of the judiciary in order to guarantee their full independence<sup>109</sup>.

### **c. In the functioning of the civil courts**

Political interference in the civil courts concern not only the regular functioning of these courts, but also the appointments and transfers of judges who compose them.

Thus, in 1997, the publication of the decree on judicial appointments and transfers led to the resignation of a large number of judges because of the discretionary appointment of judges close to the executive power to sensitive positions<sup>110</sup>. The former Minister of Justice Khaled Kabbani himself stated that judicial appointments were considered by the executive as a means of effective pressure on the judiciary and judges, because they allow the exclusion of certain judges from certain positions and permit the appointment instead of judges with whom politicians can work<sup>111</sup>. In an attempt to limit the interference of political authorities in appointment matters, the Judicial Inspectorate Council produced a circular, published in the press, asking judges who maintained contacts with political authorities with regard to judicial appointments and transfers, to avoid doing so<sup>112</sup>. So far it has remained ineffective.

<sup>109</sup> Al Nahar Journal, 08.08.1997.

<sup>110</sup> Including Judges Walid Ghamra, Wael Tabbara, Mounah Mitri and Oussama El Ajouz. The latter specified in his letter of resignation: *"I found myself at a deadlock because honest civil servants are shunt aside (...) I consoled myself with the idea that conceit, knowledge and seriousness were the unique criteria to sanction and promote the judge, but the experience I had was from another dimension as I realised during my career, and through the judicial transfers I witnessed, that the other considerations prevailing in this country, known to everybody, always took precedence, mainly over objective criteria. Moreover, nothing suggests that things will change in the short or in the long term, on the contrary. I find myself unable to continue carrying a message based in principle on the establishment of justice and equity among members of society, for he who loses something, cannot give it"*, Al Nahar Journal, 13.05.1998.

<sup>111</sup> Article published in the Bank Associations Journal (*Journal des associations des banques*), June 2004.

<sup>112</sup> Al Nahar Journal, 11.12.2005.

### **d. Within the State Council**

The State Council is not free from interference from the executive power either. Thus in 2000, the Government did not hesitate to amend Article 5 of the Law on the Status of the State Council<sup>113</sup> in order to be able to appoint a judge, Ghaleb Ghanem, President of the State Council. The original law provided that the President had to be appointed from among the Presidents of the State Council Chambers. In December 2008, following an agreement between political parties and communities, the Council of Ministers then appointed judge Ghaleb Ghanem as President of the High Judicial Council, and chose a civil judge, Chucri Sader, to replace him at the Presidency of the State Council. These transfers between the civil courts and the State Council, which require the amendment of applicable laws, result from political and communitarian considerations. They are also considered to be disrespectful and unfair to the judges of the two levels, who are the victims of these practices.

### **e. Regarding electoral supervision**

With regard to the supervision of parliamentary elections, judges who are appointed as heads of the registration committees, must often cope with interference and pressure from politicians. To such extent that in 2002, on the occasion of the 2002 elections, the Ministry of Interior issued a statement relayed by the media reports observing "(..) a gross interference of the Prime Minister and the Minister of Justice who, according to the law, have no right to make contact with the judge, head of the registration committee, or to direct him to the benefit of a specific candidate (...) However, unfortunately all this happened Sunday after midnight...".

During the 1996 parliamentary elections, the Ministry of Interior declined to provide the Constitutional Council, in charge of electoral supervision, with the minutes and other original documents to enable it to perform its mission, as some of these documents were burned. This has prompted some members of the Constitutional Council to demand the prosecution of the Minister of the Interior.

### **f. Regarding the Public Prosecution Office**

The Minister of Justice implements public policy determined by the government and ensures its consistent application throughout the territory.

<sup>113</sup> Law No. 10434/75 amended by Law No. 227 of 31.05.2000.



Although he is not a member of the Public Prosecution Office as such, he exercises his authority over all members or officers of the prosecution through the State's Prosecutor. To that end, he may order the State's Prosecutor to initiate prosecution of specific criminal offences and give him written instructions throughout the procedure. Among the famous cases initiated this way, i.e. at the request of the Minister of Justice, the cases of Samir Geagea or Michel Aoun can be cited, as well as the prosecution of certain parliamentarians and ministers.

The Minister of Justice can thus request the initiation of prosecution, and can order the suspension or the termination of prosecution, as it was the case in a number of famous cases<sup>114</sup>.

### 3.2. Influence of religions and the media

#### a. Influence of community and religious authorities

Although the Constitution has sought to eradicate confessional politics, the principle of religious representation is nonetheless still applied within the judiciary<sup>115</sup>.

In practice, the distribution of high judicial positions is decided on a community basis. Thus, the President of the Court of Cassation, who is also the President of the High Judicial Council, is a Christian Maronite; the Attorney General at the Court of Cassation, Vice-President of the HJC, is a Sunni Muslim; the Head of the Judicial Inspectorate is a Sunni Muslim; the President of the State Council is a Christian Maronite; the offices of the First Presidents of the Appeal Courts and the Prosecutors General are distributed on a religious basis. This stirs all kinds of interference up as politicians and religious leaders try to impose certain judges close to them to certain offices. The result is an interference of the functioning of the judiciary and a violation of the principle of separation of powers.

The dispute over judicial transfers prepared by the HJC in 2006 reveals the religious tensions. The Minister of Defence, Elias El Murr, withdrew his signature of the decree approving the transfers on the ground that it violated the rights of the Christian Maronite community<sup>116</sup>, and the

Minister of Justice, Charles Rizk, challenged that position<sup>117</sup>. In the end, the President of the HJC had to go to the Maronite Patriarch to discuss the developments and find a solution<sup>118</sup>.

Religious and community affiliation thus constitute a lever to influence judges, especially through their mode of appointment. The leaders of a particular community will therefore use community distribution and balance to interfere in the appointments of judges<sup>119</sup>. This phenomenon is even more serious given that community and political considerations are closely linked. Although it does not necessarily mean that judges are biased against individuals from other communities, this situation reflects negatively on the judiciary as a whole.

#### b. Influence of the media

In Lebanon, conflicts between the judiciary and the media are old and far from being resolved. Today, the media generally raises questions about the judiciary because of a number of judgements which went against legal common sense<sup>120</sup>. The judiciary, and some judges, have been attacked in media campaigns related to specific decisions or judgements. On several occasions, the Public Prosecution Office responded by prosecuting those who launched those campaigns, whether they were individuals or the media, for undermining the reputation of the judiciary. This conflict reached its climax in 1998 with a draft law – which was eventually abandoned – of the Minister of Justice on “Crimes that undermine the authority of the judiciary and acts and decisions issued by it”. In 2008, a television show accused some judges of corruption<sup>121</sup>; the HJC convened judges to a general assembly to condemn the attack suffered by the judiciary<sup>122</sup> and called on judges to do a one-day strike. Judges personally accused, sued the authors of those accusations for defamation.

If the Lebanese media sometimes reveal serious miscarriages of the judicial system, we observe conversely, and especially in high profile criminal cases, increased violations of the secrecy of the investigation. Most of the time, such violations of the rights of the defence incur little or no sanction at all. Besides – worrying phenomenon – we have observed in recent years that the media tend to

114 Michel Aoun case; Karim Bakradoni case; damaged food and pharmaceutical products case toxic waste case; etc.

115 See Nicole DUPLÉ, “ External interference that threatens the independence and impartiality of the judiciary”, Speech made at the 2<sup>nd</sup> Congress of the Association of the High Courts of Cassation of the Countries sharing the use of the French language, 7-8.11. 2007.

116 Al Safir Journal, 16.10.2006.

117 Al Safir Journal, 17.10.2006.

118 Note that the Council of Maronite Bishops issued a statement in 2002 according to which: “Citizens have lost confidence in the judiciary system which has become politicised and selective (...) justice has become a springboard to achieve the aims of influential political men”, Al Diar Journal, 05.09.2002.

119 Wassim Mansouri, “Relationship between the political power and the judicial power”, *La justice* Review No. 3, 2008.

120 Sleiman Takieddine, “The judiciary and the media from a legal point of view”, “When judges gathered” Conference Beirut, 10-11.10. 2008.

121 Television show on corruption presented by the journalist Ghada Eid on NTV channel.

122 General Assembly of 14.07.2008, Al Safir Journal, 15.07.2008.



report less frequently on public trials as they prefer to contact lawyers or judges directly.

#### **4. OTHER OBSTACLES THREATENING THE INDEPENDENCE OF THE JUDICIARY**

##### **4.1. Hierarchical inertia**

The hierarchy of power within the justice administration does not, in principle, apply to the making of decisions and rulings by judges, which result from their individual conscience only. The heads of courts are nonetheless invested with administrative powers which can threaten the independence of judges if they are not strictly limited to the needs of the service. They have in effect the power to regulate the organisation of hearings, appoint judges and assess the work of the judges under their authority (which is an important element of their promotion and transfer). Even if safeguards limit the exercise of these powers, judges are not immune from pressure or indirect sanctions from their superiors if the relationship between them is not perfectly serene.

In this regard, the collective composition of many courts should, in principle, allow room for discrepancies of opinion. According to the "Sader" Review that studied the judgements of the Court of Cassation in 1999, 2000 and 2001, over 99% of these decisions were made unanimously. A Lebanese judge testified to the pressures she suffered from the President of the court and political forces for dissenting with certain decisions that she felt were incompatible with her beliefs. She was transferred as a result<sup>123</sup>.

##### **4.2. The lack of effective and fair enforcement of judgements**

The enforcement of judgements rendered by Lebanese courts frequently encounters obstacles. This problem particularly affects the State Council

123 Judge Ghada Aoun: *"The collective composition of the courts duly implies the existence of discrepancies of opinion (...) What is the point of appointing two judges next to the President if the counsellor is seen as an extra who cannot, if need be, address both external and internal pressures resulting from the agreement of the majority and if the opinion of the President will always prevail? Personally, I felt that I was going to pay the price after the MTW case. My career has been frozen and certain of my colleagues have also paid the price when they refused bargain and subordination. If we ask most judges working in collegial courts if they often note irregularities, we observe the following response: 'It is better to have unanimous decisions because we want to establish better relationships between us'. Does the desire to please others and avoid bothering them justify the idea to override truth even if it is done with good will? Is the maintenance of relationships more important than the rule of law? Why are we witnessing conflicts and problems affecting the work of judges who dare to disobey the President, or the majority, and suffer persecution, slander and all sorts of bad names (...)?"* Dissenting opinions in the Lebanese judicial system, Al Nahar Journal, 05.07.2006.

whose decisions are often not enforced, though the administration is in principle obliged to enforce the decisions rendered by administrative courts<sup>124</sup>. In July 2003, the Chamber of Deputies recommended to the government to respect judicial decisions and enforce them without delay. Until now, this recommendation has been ignored.

It should be noted that the jurisprudence of the European Court of Human Rights links the effective and fair enforcement of judgements to the principle of the right to a fair trial within a reasonable time and to the right of access to justice<sup>125</sup>. The Lebanese law allows, however, the injured party to lodge a claim for damages before the State Council for non-execution of judgements<sup>126</sup>. In addition, following a reform instituted in 1993, the State Council has been granted the power to impose penalties against legal persons of public law in case of non-execution of its judgements<sup>127</sup>.

##### **4.3. Limited access to legal and judicial information**

###### **a. Access to information of judges**

Lebanese judges have difficulties in accessing the legal and judicial information<sup>128</sup> they need to decide cases before them, in accordance with the law, notably because of the lack of a complementary computing system in the courts and registries which would make it easily accessible.

###### **b. Access to information by the people**

The Lebanese people should enjoy a broad and easy access to legal and judicial information. The principle of transparency should therefore be promoted even if it means restricting access to

124 Decision No.4 of 09.01.1962.

125 Hornsby v. Greece, 19.03.1997, European Court on Human Rights, Reports 1997-II. Similarly, the Interamerican Court of Human Rights considers that the lack of enforcement of final decisions of the courts violates the right to judicial protection and the right to have an effective remedy as guaranteed under Article 25 of the American Convention on Human Rights, *Cinco Pensionistas v. Peru*, 28 February 2003, Interamerican Court of Human Rights, Series C No. 98 (2003)

126 Decision No. 128 of 09.12.2003.

127 Decisions No. 602 of 01.06. 1998 and No. 337 of 06.03.2006.

128 See to that end, the presentation of Judge Ralph Riachi on behalf of the Minister of Justice at the Congress of International Experts held in Rome in February and March 2008 under the auspices of the International Development Law Organization (IDLO), entitled, "The law in the judiciary – The development of the rule of law in Lebanon and the ways to provide technical assistance to the Lebanese judicial system", Al Nahar Journal, 01.03. 2008.





certain information concerning the nature of the case or special interests (public order, presumption of innocence, national security, protection of minors, etc.) where it is justified. In this regard, the World Bank considers that the publicity of cases constitutes one of the most important safeguards against fraud and corruption.

However, no law has yet been adopted specifically on access to legal and judicial information. Moreover, the lack of transparency can also be explained by the absence of a legal culture among the population, which often ignores its rights and the means of achieving them, and by the inaction of official and private media in this respect<sup>129</sup>.

#### **4.4. Influence of the social environment**

Judges must not be, or appear to be, vulnerable to political, religious or economic influence that may impair their impartiality. To this end, legal texts provide, for instance, an explicit prohibition against holding political offices (including the mere fact of joining a political party) in order to show citizens that justice is administered by a body of independent judges representative of the population in all its diversity.

In practice, many judges do not hesitate to express their political, regional or religious membership by participating in events or political debates of a public nature. Judges may also accept private invitations from leading political figures or businessmen which sometimes may give rise to media coverage. Such behaviours raise doubts about the impartiality of judges among the public opinion.

Without asking to separate judges from the society in which they serve, many voices ask for the elimination of potential conflicts of interests or situations inconsistent with the impartiality and independence of judges<sup>130</sup>.

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129 *Idem.*

130 See, for example, the speech by the former President of the HJC, Judge Philippe Khairallah, on 11.11.1994, asking judges to avoid feasts and meetings that only aim at flattering their vanity and manipulating them, without their realising it, for personal ends and at the expense of their reputation and that of the judiciary.



### III. JUDICIAL CORRUPTION

Corruption, namely “the abuse of public power for private benefit” undermines the judiciary as it denies victims and defendants the fundamental right to a fair trial. Judicial corruption, which may involve financial and material interests as well as immaterial ones (political or professional ambitions, etc.), encompasses any undue influence on the impartiality of the judicial process by any actor of the judicial system.

Judicial corruption can occur at all stages of the judicial process, from pre-trial activities (police investigation, judges’ investigation, etc.) until the enforcement of the court decision, including at the appeal stage. The objectives that underlie acts of corruption in the judicial sector vary. If certain forms of corruption are designed to alter the outcome of the trial, others are intended to accelerate the process, without necessarily influencing its outcome, for instance.

Some lawyers may play the role of middlemen in corruption, including by conveying the wishes of the parties to judicial officers or those of the judicial officers to the parties, or by failing to act when the conduct of the court suggests that there was corruption. In some cases, lawyers may also benefit themselves from corruption, notably in exchange for promises to ensure the faster processing of a particular file.

#### 1. THE DIFFERENT TYPES OF JUDICIAL CORRUPTION

The two main types of corruption that most affect the judiciary are first, political interference in judicial proceedings and second, the use of bribes.

##### 1.1. Political interference in judicial proceedings

A pliable judiciary allows certain power holders to pursue dubious or illegal strategies including embezzlement, nepotism, cronyism or illegitimate political decisions. In this context, corruption can lead to the mere subordination of judges, or to the manipulation of judicial appointments, salaries and employment conditions. In principle, in order to prevent such corruption, it is essential to adopt constitutional and legal mechanisms that protect judges from a sudden dismissal or transfer; as it has been explained earlier, such protection is not complete in Lebanon.

Political corruption leads to the abdication of the

judiciary’s powers and responsibilities in major disputes concerning, in particular, cases of illegal enrichment, trials of ministers, protection of the environment, damaged food or pharmaceutical products and toxic waste. In many such cases, justice was not rendered. This situation, together with other irregularities and scandals, has shaken the conscience of the Lebanese people<sup>131</sup>.

This corruption also leads to major inconsistencies in the jurisprudence, which threatens the course of justice and the propriety of judicial proceedings. Such inconsistencies appeared for instance in the jurisprudence of the Court of Cassation regarding the interpretation of Article 70 of the Constitution on proceedings against ministers. The Court of Cassation has long affirmed the incompetence of ordinary courts to investigate allegations of misuse of public money made against ministers to the benefit of the High Court of Justice<sup>132</sup>, until it changed its mind during the presidency of Émile Lahoud and granted civil judges the right to prosecute<sup>133</sup>. The Plenary Assembly of the Court of Cassation subsequently issued a decision reversing its previous jurisprudence and reaffirmed the lack of jurisdiction of civil judges to judge ministers<sup>134</sup>. For many, these successive jurisprudential reversals are linked to political changes: the decision of the Court of Cassation removing again the jurisdiction of civil judges was issued one week before the announcement of the new government in which the politician concerned by that decision, Fouad Siniora, was appointed Minister of Finance<sup>135</sup>.

Some cases of corruption of judges by politicians caused quite a stir, such as the case about the distribution of fuel coupons to a large number of judges by the former general security chief, Jamil El Syyed, between 1999 and 2005.<sup>136</sup>

Due to political, religious and communitarian interferences, corruption cases involving judges are confronted with the inaction of the Judicial Inspectorate Council. In flagrant cases of corruption that are impossible to ignore, the HJC generally requests the judge concerned to

131 Sleiman Takkiedine, “The image of the judiciary in Lebanon in fact and in law”, in “The Lebanese judiciary: construction of power and institutional development”, Lebanese Centre for Policy Studies, Beirut, 1999

132 Judgement of the Court of Cassation in the Joseph El Hachem case.

133 Judgement of the investigating judge Said Mirza of 19.03.1999; judgement of the Court of Cassation of 24.03.1999 in the former Oil Minister Chahé Barsoumian case.

134 Judgement of the Plenary Assembly of the Court of Cassation in the former Finance Minister Fouad Siniora case on 26.10.2000.

135 See the statements of deputies Boutros Harb and Nicolas Fatouche during the discussion of the ministerial statement, Minutes of the Chamber of Deputies, 20<sup>th</sup> legislative round, 2<sup>nd</sup> ordinary session, 3<sup>rd</sup> meeting of 2-6.11.2000.

136 Some deputies stressed that these cases showed that corruption and control by means of bribery had spread in the judiciary, Minutes of the Chamber of Deputies, 18<sup>th</sup> legislative round, 3<sup>rd</sup> extraordinary session, 1<sup>st</sup> meeting of 23-25 and 29-31.11.2000.



submit his resignation without prosecuting him and grants him the totality of his allowances, in violation of the law. When disciplinary action is taken against some judges, they are sometimes not even enforced<sup>137</sup>. Moreover, beyond disciplinary proceedings, no criminal proceedings have ever been launched against a judge since Lebanon's independence, although many cases of bribery and other forms of corruption have been identified<sup>138</sup>.

## 1.2. The use of bribes

The payment of bribes can occur at any stage of judicial proceedings and with respect to any actor of the process. Judges may accept bribes to delay or accelerate a case, to decide a case in a given way, confirm or reverse a decision or influence other judges. Lawyers may charge additional fees to expedite or postpone a case, direct their clients to judges that might render a favourable decision in exchange for a bribe, etc. Litigants, who doubt from the outset of the honesty of judges and the fairness of the judicial process, are more likely to bribe the various actors to achieve their ends.

Despite various attempts to fight corruption and the use of bribes within the Palace of Justice<sup>139</sup>, nothing has changed fundamentally and the practice remains widespread. Besides – a Lebanese specificity – if a minister or a political figure or a civil servant is accused of corruption, he will most often continue to receive the full support of his community, as demonstrated in several cases.

Beyond the work of specialised NGOs, which can analyse the quality of judicial proceedings, assess the magnitude of the corruption phenomena and exert some pressure on the key actors involved, the State will have to effectively demonstrate that it is capable of adopting and implementing substantial reforms in the judicial sector to restore public confidence in the judicial system. In this regard, an effective policy to fight corruption requires a balance between, on the one hand, increased independence for judges, guaranteed by mechanisms that block undue influences and pressures and, on the other hand, enhanced accountability of judges, also accompanied by clear and effective mechanisms.

## 2. JUDICIAL CORRUPTION AND THE MEDIA

The media should in principle be protected

137 Bahjat Jaber, *Al Nahar Journal*, 09.02.1999.

138 Mohammad El Moghrabi, *Al Nahar Journal*, 06.08.2008.

139 The first president of the Court of Appeal of Mount Lebanon had issued a decision in November 1999 applicable to all judges and registry officers and displayed in the Palace of Justice, according to which any bribe of any type would expose both parties to merciless judicial proceedings.

from retaliation when they update or report on corruption within the judiciary or when they criticise the lack of independence of certain judges more generally. Without such protection, they cannot effectively fulfil their monitoring role nor can they be an opposition force.

Yet, under Article 22 of Decree Law 104/77, any libel against a judge that is published by the press is punishable by a prison sentence of one to two years in addition to a fine of 100.000 to 1.000.000 L.L. (48 to 481 €). Besides, Article 383 of the Criminal Code imposes a prison sentence of two months to one year for any defamation by word or gesture, in writing or by any other means of communication, telephone or others, against any officer in connection with his functions. If the defamation targets a judge in the course of his duties, the sentence changes from six months to two years in prison. Under Article 389 of the same Code, defamation against a judge outside of his duties is also punished with imprisonment up to six months maximum. The publication of the sentence can also be ordered. These provisions apply to all authors of defamation without distinction and thus concern the parties at trial as well as, for instance, media. It is worth noting that even in an action against the State for damages for miscarriage of justice, the applicant whose complaint contains defamatory allegations not covered by the rights of the defence is liable to a fine of 400.000 to 800.000 L.L. (192 à 385 €), without excluding the possibility of criminal prosecution. There is however a limit to this principle. Article 387 of the Criminal Code allows the defendant to be acquitted if he reports the truth of the alleged facts. Without denying the need to protect judges - like other citizens - from defamation, such measures are extremely harsh and detrimental to freedom of expression and seem to be intended to silence criticism against the judiciary, even though the judiciary is subordinate to the political power and clearly tolerates corruption.

The denunciation of corruption cases often relies on some brave lawyers who alert the media about malpractice that may go unnoticed. That being said, the judiciary usually does not tolerate any form of attack or accusation regardless of the authors. Lawyers were prosecuted for mentioning corruption cases involving the judiciary. Similarly, following the broadcast of a television programme about corruption in the judiciary, the Public Prosecution Office did not hesitate to prosecute not only the TV channel, but also the journalist hosting the show and some of her guests, including a lawyer<sup>140</sup>. The show also prompted a strong reaction from the High Judicial Council which called on judges to do a one-day strike.

140 Show broadcasted in July 2008 by the Lebanese TV channel NTW, *Al Safir Journal*, 15.07.2008.



## IV. LAWYERS: RIGHTS AND FACTS

for taking decisions on all matters concerning the functioning of the Bar.

### 1. HISTORICAL OVERVIEW AND ORGANISATION OF THE BAR ASSOCIATION

As the period of “free” defendants ended with the demise of the Ottoman Empire, the first Bar Association was created in Lebanon in 1919, even before independence. Based in Beirut, it was followed in 1921 by the creation of a second Bar in Tripoli.

The executive bodies of the Bar<sup>141</sup> are the General Assembly, the Bar Council and the President.

#### 1.1. The General Assembly of the Bar Association

The General Assembly, composed of all member lawyers who paid their annual dues, is the highest authority within the Bar. In addition to its ordinary annual meeting, it meets in extraordinary meetings whenever the Bar Council considers it necessary or on request of one third of the lawyers who compose it.

The powers of the ordinary General Assembly, include the election of the President of the Bar, of the members of the Pension Fund Commission; the verification and approval of accounts for the financial year and approval of the budget for the coming year; the setting of the annual dues payable by the lawyers to the Bar fund and to the Pension Fund. The extraordinary General Assembly discusses only the issues specified in the notice or decision of the Bar Council.

#### 1.2. The Council of the Bar Association

The Bar Council of Beirut is composed of twelve members, including the President. The Tripoli Bar has six members, including the President. The members of the Council are chosen among lawyers at the court inscribed on the general register of lawyers for at least ten years. The former presidents become automatically permanent members of the Bar Council, but have no voting rights.

The Bar Council is the executive body responsible

<sup>141</sup> Law No. 8/70 of 11.03.1970 on the profession of lawyer and its amendments; Decree Law No. 385 of 13.01.1971 ; Laws No. 18/78, No. 21/83, No. 42/91 and No. 95/91.

### 1.3. The President of the Bar

The President is the head of the Bar. He is chosen from among the members of the Bar Council who have a minimum of twenty years of practice. The two-year mandate of the President can only be renewed for two years after its expiration.

The Bar has several bodies working to improve the functioning of the legal and judicial sector in Lebanon, including the Human Rights Institute.

### 2. THE ROLE OF THE BAR IN THE INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY

Since its inception in 1919, the interest of the Bar for the question of the independence of the judiciary has not decreased. Through their professional organisations, lawyers have thus contributed to initiatives to reform the judicial sector, even by submitting reform projects for the Lebanese courts and supporting, when needed, certain claims made by judges.

Lawyers did not hesitate to react publicly, including in the way of strikes, when they believed that independence was threatened, as illustrated by the following examples:

- In April 1951, the General Assembly of the Beirut Bar unanimously opposed the law on powers and prerogatives of religious courts adopted by the government, called for its repeal and, to this end, declared a one-day symbolic strike.
- In February 1958, the protests of the Bar Council against a government draft to lift the immunity of judges led to the withdrawal of the draft.
- More recently, in January 2003, the Beirut Bar Council issued a statement deploring the deteriorating situation of the judiciary, and in particular its lack of independence demonstrated by the influence of politicians on judicial decisions<sup>142</sup>.
- In February 2005, the same Bar Council issued a statement<sup>143</sup> stressing the need to appoint the

<sup>142</sup> This statement of 03.01.2003 notably declared that “*The Bar Council reiterates its regret to see the deteriorated condition of the principle of independence of the judiciary in Lebanon (...) This explains clearly why repeated judicial decisions were made in accordance with political objectives (...) Citizens ask: ‘What are those in charge of the protection of the judiciary whose independence is enshrined in the Constitution as a power doing?’*”

<sup>143</sup> This statement of 11.02.2005 specifies: “*The Bar Council recalls the urgent need to finalize the appointment of members who must be appointed to the Constitutional Council (...) which is the higher court to which the Constitution assigned the task to decide on electoral disputes (...) and has not been created to be used by those in power to attract those who aspire to have access to the Constitutional Council, and to violate the Constitution*”.



members of the Constitutional Council.

- One year later, in January 2006, a new statement deplored the state of justice in Lebanon and called for judicial appointments to be decided without political interference. In the process, lawyers were called to boycott hearings to protest against the executives procrastinations in appointing members of the High Judicial Council.
- In November 2008, the resignation of Judge Ralph Riachi from the High Judicial Council in protest against the delay in judicial appointments and transfers sparked off reactions of the lawyers of the Beirut and Tripoli Bars who symbolically suspended their activities for two hours<sup>144</sup>. Though the conflict subsided with the appointment in December 2008 of the Presidents of the HJC and of the State Council, the discontent caused by the absence of appointment of the President of the Judicial Inspectorate continued.
- Finally, in May 2009, in the light of the criticism of the judiciary following the release of four generals by the Special Tribunal for Lebanon, the Beirut Bar Council issued a statement to remind that the principle of independence of the judiciary, guaranteed by the Constitution, imposes on the different authorities the duty to respect this independence and therefore not to interfere in the affairs of justice.

Given the legislative work necessary to effectively strengthen the judiciary, the Beirut Bar has established a committee to draft legislative reform in this direction. However, the political and security circumstances of recent years in Lebanon have prevented the realisation of this project.

### 3. GUARANTEES AND IMMUNITIES OF LAWYERS

Given the principles governing the rights of the defence, lawyers cannot be held responsible and cannot be prosecuted because of the content of its written and oral means of defence as long as they do not overstep the limits of the defence.

In addition, no preventive arrest based on statements or writings made in the exercise of

<sup>144</sup> On this occasion, the President of the Beirut Bar stressed in a speech that: “lawyers protest against the negligence of the State and the slowness with regard to judicial appointments (...) Judicial appointments are not an end in themselves but a step towards a deep and radical reform of the judicial system (...) the protest movement of lawyers does not target judges and those in power; but negligence and irresponsibility”; The President of Tripoli stated “We fight for justice and security for all and against the system of political clientelism (...) The country remained seven months without a High Judicial Council and for three years newly appointed judges were not assigned to courts despite the large number of vacancies (...) It is regrettable that the political power perseveres in the destruction of justice and the rule of law by trying to get their hands on the judiciary and establishing a system of political clientelism”, See The revolt of lawyers against the decay of the judiciary, *L’Orient le Jour*, of 12/12/2008.

his profession can take place in the context of proceedings against a lawyer. If proceedings do take place, the judges of the court where the incident occurred cannot sit with the panel that will judge the lawyer.

A warrant to search a lawyer’s office or to seize money or property stored therein is only enforceable 24 hours after filing a copy of the warrant at the headquarters of the Bar to which the lawyer is enrolled and sending a summons to the President of the Bar so that he can attend, in person or by delegation, the execution of the warrant. Similarly, the sealing of a lawyer’s office for tax grounds can only take place at least ten days after sending a written warning to the interested lawyer and notifying that warning to the Bar to which the lawyer is enrolled.

Except for flagrant crimes, a lawyer cannot be questioned in connection with a crime before notifying the President of the Bar who can attend the interview in person or by delegation. The lawyer can only be prosecuted for acts resulting from the exercise of his profession or committed during its exercise after a decision by the Bar authorizing the proceedings. It is therefore up to the Bar Council to assess whether the incriminated act is linked or not to the exercise of the profession.

Finally, any crime committed against a lawyer in the exercise of his profession or because of this exercise exposes its author to a prison sentence of six months to two years<sup>145</sup>.

### 4. ETHICS AND DISCIPLINE OF LAWYERS

The lawyer must, in all of his acts, comply with the principles of honour, honesty and integrity and fulfil all the duties imposed by law and the regulations and traditions of the Bar.

In February 2002, the Beirut Bar Council adopted the Code of Ethics of the Legal Profession, which focuses more on ethics and moral guidelines than on specific requirements governing the conduct of lawyers. Article 2 of the Code underlines the importance of transparency and independence in the practice of law, while Article 17 prohibits lawyers from using influence or illegal methods to win a case. Article 40 of the Code provides for a series of disciplinary measures against lawyers who fail in the duties of their profession or who, in the exercise of their profession or independently of it, commit an act likely to damage it, or who behave in a manner inconsistent with the dignity of the profession. The penalties are: warning, reprimand, prohibition of practice for a period not exceeding three years, and disbaring.

<sup>145</sup> Article 383.5 of the Criminal Code.



## **5. THE RELATIONSHIP BETWEEN JUDGES AND LAWYERS**

The relationship between judges and lawyers is governed by the new Code of Civil Procedure and the law on the exercise of the legal profession. The new Code of Ethics of the Legal Profession also includes a number of principles applicable to relations with judges.

Article 35 of the Code of Ethics of the Legal Profession insists on the importance of coordination between the Bar and the High Judicial Council on issues concerning the justice sector. However, at the institutional level, relations between the two bodies – judges and lawyers – are not structured to ensure the proper functioning of justice. In practice, consultations between the Beirut Bar Council and the HJC occur most of the time in cases of specific disputes which may adversely affect their relations. In the past, a joint committee was formed, comprising members of both councils, to coordinate the relationship between judges and lawyers. The committee did not last beyond a few meetings, apparently because judges were reluctant to participate. Consequently, there is currently no coordination or consultation organised between the two professions.



## V. REFORM PROJECTS OF THE LEBANESE JUDICIARY

Since the end of the civil war, many projects or draft laws relating to the independence of the judiciary and more generally to the action of the judiciary have been debated, sometimes publicly. The most remarkable texts in this respect are:

- the project presented by the deputy Issam Naaman in 1996<sup>146</sup> ;
- the draft law on the judiciary submitted by deputies Boutros Harb and Hussein El Husseini in 1997<sup>147</sup>. This very detailed draft was submitted to the parliamentary committees for study, where it remains today;
- The draft prepared by the former Minister of Justice and President of the State Council, Joseph Chaoul, was also discussed by the parliamentary committee of administration and justice;
- the project of the former President of the Bar of Beirut, Marcel Sioufi<sup>148</sup>.

Most of these reform projects or draft laws grant to the judiciary the status of an independent authority, with improved safeguards. One of their common elements concern the reform of the High Judicial Council, which is given an enhanced role in overseeing justice affairs, including with regard to administrative and financial matters, and extensive powers with regard to the appointment, transfer, promotion, sanction, remuneration, retirement and dismissal of judges. The full independence of the judiciary is however not enshrined since those projects maintain the subordination of the Public Prosecution Office to the Minister of Justice and include the lack of real financial autonomy; the existence of exceptional courts (Justice Council and military courts) and religious courts that are not supervised by the HJC; the non-recognition of the judges' freedom of association<sup>149</sup> ;

For their part, reforms proposed by the Ministry of Justice essentially focus on technical aspects and their scope is limited (legal fees, salaries and allowances, etc.) and do not have a real impact on the independence of the judiciary. Some proposed projects even worsen the situation, such as the one which aims at replacing the collegial composition of first instance courts by

single judges. This reform, intended to expedite the processing of cases, has raised concerns with regard to the question of independence as single judges are deemed less capable than collegial courts to withstand external pressures and influences<sup>150</sup>.

<sup>146</sup> Issam Naaman, "The Lebanese judiciary, from an occupation to a power", *Abaad Review*, No. 5, June 1996.

<sup>147</sup> This project was different as it first included a criminal offence for interferences in the work of judges and second, granted the courts the power to control the constitutionality of laws, by way of exception for unconstitutionality or under the principle of hierarchy of norms.

<sup>148</sup> This project proposed to transform the High Judicial Council into a High Judicial Committee composed of retired judges, lawyers and academics who had worked for at least 30 years, *Al Safir Journal*, 23.02.2000.

<sup>149</sup> Marwan Sakr, "Comparative study of projects proposed for reforming the judiciary" in "The Lebanese judiciary: construction of power and institutional development", *Lebanese Centre for Policy Studies*, 1999.

<sup>150</sup> Iskandar Najjar, "Why leave?", *Al Nahar Journal*, Annex of 04.06.1997.



## VII. RECOMMENDATIONS

It should be recalled that the independence of the judiciary can only be achieved through substantive constitutional and legislative reforms, together with the political will to ensure that such guarantees are then implemented and respected in practice.

The 2004 EMHRN report *Justice in the South and East Mediterranean Region*<sup>151</sup> includes a series of general recommendations which are still valid and which it would be of benefit to repeat here:

*The independence of the judiciary (vis-à-vis the political system, religious denominations and all other powers) must be expressly stated and recognised in the Constitution. The status of judges must form the object of an organic law to guarantee that it complies with the Constitution.*

*Above and beyond this institutional recognition, members of the judiciary must enjoy specific guarantees:*

- *Judges must be recruited in conditions of equal access to posts through competitive examinations and appointed exclusively on the basis of their competence.*
- *They must be remunerated by the state at a satisfactory level.*
- *Their careers must be managed by an independent body consisting of fellow judges, but also of persons not from the judicial system and without any interference from the legislature or the executive.*
- *Judges must enjoy the benefits of further training and education, and should have the right to form or join trade unions.*
- *Ordinary judges must have security of tenure, except in the event of disciplinary measures taken by an independent body.*
- *Judges in the Public Prosecution Office must have the same independent status as ordinary judges. They must be subject to rules which ensure the proper application of criminal procedures launched by the executive power.*

*Since there can be no proper justice without an effective and independent defence, [the participants to the seminar] recommend that:*

- *The training of lawyers should at least be identical to that of judges.*
- *The independence of lawyers and of their professional associations should be legally recognised and protected.*

(...)

*These requirements entail the abolition of all courts with exceptional jurisdiction, either by virtue of their composition or the rules applicable to them.*

*Finally, a fair system of justice develops under the*

*scrutiny of society. The role of civil society should therefore be recognised and promoted.*

**Keeping in mind these general recommendations, we make the following specific recommendation to the Lebanese judiciary:**

### 1. RECOMMENDATIONS TO THE LEBANESE AUTHORITIES

#### 1.1. International conventions

Lebanon has ratified the main human rights conventions, which is a very positive signal. We thus recommend to the Lebanese authorities to pursue their efforts in this field and notably to:

1. Ratify the other international human rights instruments, including the Optional Protocols to the International Covenant on Civil and Political Rights and to the Convention on the Elimination of All Forms of Discrimination against Women.
2. Consider lifting reservations made to several human rights instruments, in particular to the Convention on the Elimination of All Forms of Discrimination against Women.
3. Fully incorporate the international conventions ratified by Lebanon into its domestic legislation.
4. Ensure, through regular awareness raising and training activities, that Lebanese judges have a good knowledge and understanding of the provisions of international conventions and their applicability in Lebanese domestic law.

#### 1.2. Constitutional reform

We recommend to the Lebanese authorities to amend the Lebanese Constitution in order to comply with international standards on the independence of the judiciary. To that end, they should:

5. Expressly state and recognise the independence of the judiciary vis-à-vis the political system, religious denominations and all other powers.
6. Explicitly include in the Constitution a provision on the establishment and composition of the High Judicial Council (HJC) and provide to the HJC full independence from the executive and legislative powers and control over the administrative and financial affairs of the judiciary.

<sup>151</sup> See "Justice in the South and East of the Mediterranean Region", EMHRN, 2004, pp. 17-19.





7. Affirm the principle of direct election of at least half of the members of the HJC among judges according to a fair and transparent election process organised by and under the supervision of the HJC itself.
8. Explicitly include in the Constitution the principle of security of tenure of judges, except in case of disciplinary measures taken against them by an independent body.
9. Amend Article 95.b) of the Constitution so as to abolish the rule of religious representation at each post of the judiciary without any exception and replace it by the principles of specialisation and competence.
10. To that end, allocate an independent budget to the HJC for all of the expenses related to the judicial system and grant the HJC the means to efficiently fulfil its mission (independent budget, own personnel and offices).

#### The status of judges

Such amendments would create a solid constitutional foundation for the independence of the judiciary. These should be accompanied by a series of legislative reforms aimed at implementing these principles.

### **1.3. Legislative reform**

The laws on the organisation and functioning of the judiciary, including the Law on the judicial system, must be amended in order to ensure real independence both for the judiciary as an institution and for individual judges, as a means towards this independence. To that end, the following amendments are recommended:

#### High Judicial Council (HJC)

The composition and powers of the HJC should be revised and extended, by strengthening its administrative and budgetary autonomy and by guaranteeing its complete independence from any interference of other powers.

10. To modify the composition of the HJC in order to include among its members judges representing all categories and levels of courts. At least half of its members should be elected by judges.
11. Decide that the president of the HJC will be appointed from among members of the HJC by a decision taken by the majority of HJC members without needing any additional approval.
12. Place all Lebanese courts, with the exception of administrative courts, under the control and supervision of the HJC.
13. Grant the HJC responsibility over all financial and administrative affairs of the judiciary, including over all court administrative staff.
14. To that end, allocate an independent budget to the HJC for all of the expenses related to the judicial system and grant the HJC the means to efficiently fulfil its mission (independent budget, own personnel and offices).
15. Recognise in practical terms the powers of the HJC in supervising the selection, appointment, training, posting, transfer, promotion, remuneration, dismissal and retirement of judges without any interference of the Minister of Justice or of the executive.
16. Alternatively, and until the law on the judicial system is amended, include a provision requiring the political authorities to sign and publish by decree, within a period to be set by law, the decisions of the HJC regarding the appointment, posting and transfer of judges.
17. Establish and adopt objective and transparent criteria with regard to the appointment, transfer, and promotion of judges, based on the sole principles of integrity, competence, specialisation, experience, and without taking into account any political or religious factor.
18. Repeal Article 95 of the law on the judicial system, which allows the HJC to dismiss any judge without resort to any disciplinary proceedings.
19. Amend the law on the judicial system, in particular Articles 44 and 132, in order to explicitly provide the Lebanese judges freedoms of expression, belief, association and assembly, in accordance with the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and Principle 8 of the Basic Principles on the Independence of the Judiciary.
20. In that respect, recognise expressly and without any restriction that judges have the right to freely form and join professional associations aimed at protecting their interests, promoting their professional training and protecting the independence of the judiciary in accordance with Principle 9 of the Basic Principles on the Independence of the Judiciary.
21. Review the code of judicial conduct drafted by the Ministry of Justice in order to include the judges' freedoms of expression, belief, association and assembly, in particular their right to form or join professional organisations.
22. Recognise the right of judges associations to be created the right to freely collaborate with or join other associations, federations or



unions both at the national and international levels.

23. Increase the salaries of judges and court administrative staff in order to, at least, follow rises in living costs.
24. Remove all obstacles that impede women from entering the judicial profession and from gaining promotion in the judicial system, encourage women to pursue a career as a judge and guarantee gender equality in salaries and career opportunities for all judges regardless of their gender.

#### Training of judges

25. Strengthen the autonomy, in particular the managerial autonomy, of the Institute of Judicial Studies *vis-à-vis* the Minister of Justice.
26. Focus the core training of judges on the issues of independence and impartiality, in particular during the training on judicial ethics.
27. Include in the curriculum of trainee judges the study of international human rights conventions, in particular those ratified by Lebanon, and the modalities of their implementation in domestic law.
28. Raise awareness among trainee judges about the specific problems faced by women with regard to access to justice.
29. Set up specialised trainings complementary to the general core training within the Institute of Judicial Studies.
30. Put in place an efficient system of compulsory in-house training for judges throughout their careers that would take into account the participation of each judge for their individual appraisal.

#### Reform of religious and special courts

In accordance with international standards, Lebanese authorities are requested to abolish all special courts and to transfer their jurisdiction to ordinary courts under the supervision of the High Council of the Judiciary. To that end, we recommend:

31. With regard to the special courts, we recommend:
  - 31.1. To abolish the Justice Council and to transfer its jurisdiction to ordinary courts.
  - 31.2. To abolish all military courts and the transfer of their jurisdiction to ordinary

courts.

- 31.3. Alternatively, until they are purely and simply abolished, to limit the jurisdiction of military courts so that they cannot try civilians under any circumstances.
- 31.4. Provide that military courts, until their abolition, will be placed under the supervision of the HJC and that judges will be appointed by the HJC or upon its approval.
32. With regard to religious courts, we ask the Lebanese authorities to:
  - 32.1. Place all religious courts under the supervision of the HJC and provide that judges will be appointed by the HJC or upon its approval.
  - 32.2. Enshrine the optional nature of religious courts, which can only be referred to with the agreement of all concerned parties.
  - 32.3. To complete the Lebanese civil legislation in order to allow the settlement of all personal status matters outside the religious framework.

33. Abolish, or at least place under the supervision of the HJC, all other courts, committees or special commissions which have the power to render judgements.

#### Administrative courts

34. To implement the principle of the right of appeal in administrative matters provided in Law No. 227 of 31.05.2000 and consequently establish first level administrative courts.

#### Access to a fair trial

35. To amend the current legislation to provide all persons arrested or under investigation with the right to retain a lawyer to represent them in police stations and from the commencement of the investigation process as well as the right to remain silent except in the presence of a lawyer.
36. To abolish the authority vested in police station chiefs, police officers and intelligence agents to conduct investigations as such authority infringes on the jurisdiction of the Public Prosecutor.
37. To abolish or reduce litigation fees to a symbolic amount and set up an effective legal aid system.
38. To set up an administration for penalty



enforcement, under the Ministry of Justice, tasked to supervise the enforcement of penalties, to monitor all prisons and detention centres, and to deal with obstacles to penalty enforcement.

39. To adopt alternative penalty procedures.

#### Fight against corruption

40. Apply in an effective, objective and transparent manner the Lebanese domestic legislation regarding the fight against corruption (Criminal Code, Law on Illegal Enrichment, laws on the disclosure of assets, Law regulating the Court of Auditors, etc.).

### **1.4. Relations with civil society**

In their relations with civil society, Lebanese authorities should:

41. Regularly inform and consult civil society organisations, in particular those involved in human rights and justice-related issues, about any ongoing or foreseen developments in the field of judicial reform and, as much as possible, take into consideration their recommendations and suggestions.
42. Work in close cooperation with the Bar Associations of Beirut and Tripoli and other lawyers' associations when preparing legislative reform in the field of justice.

## **2. RECOMMENDATIONS TO THE EUROPEAN UNION**

Within the framework of existing agreements and assistance programmes, and its general relations with Lebanon, we recommend the European Union to:

### **2.1. Strengthen respect for international standards**

43. Promote a common reference for universal human rights standards, and insist on the need for Lebanese authorities to fully incorporate ratified treaties into domestic legislation, including, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against

Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment.

44. Encourage Lebanon to ratify additional human rights instruments, including the Optional Protocols to the International Covenant on Civil and Political Rights and to the Convention on the Elimination of All Forms of Discrimination against Women, and lift all reservations made on several ratified human rights instruments, in particular on Convention on the Elimination of All Forms of Discrimination against Women.
45. Encourage Lebanon to amend its Constitution and domestic legislation in order to strengthen the status of the judiciary and to increase the level of independence both of the judiciary as an institution and of individual judges, in accordance with international standards.

### **2.2. Encourage Lebanese authorities to create the environment and the conditions for a global and integrated reform of the judiciary**

We also recommend the European Union to encourage the Lebanese authorities to:

46. Organise a comprehensive national debate on the necessary reform of the judiciary and ensure that actors within the judiciary, such as judges themselves and their associations, as well as civil society at large, are included in these consultations.
47. Reform the institutional framework, both in the Constitution and legislation, in order to strengthen the independence of the judiciary and to ensure equal access to justice, equality before the law and the right to a fair trial.
48. In particular, reform the High Judicial Council by modifying its composition and powers, strengthening its budgetary autonomy and guaranteeing its real independence from any interference by other powers.
49. Recognise and respect the judges' rights to freely form and join associations, such as judges' organisations, aimed at promoting and protecting their interests and those of their profession, in accordance with Principle 9 of the Basic Principles on the Independence of the Judiciary.
50. Similarly, recognise and respect judges' freedoms of expression, belief, association and assembly, in accordance with the Universal Declaration of Human Rights and Principle 8 of the Basic Principles on the Independence of



the Judiciary.

51. Fight, without discrimination, all forms of corruption within the judiciary.

### **2.3. Support to the Lebanese civil society**

In order to support the Lebanese civil society, we recommend the European Union to:

52. Engage in regular consultations and dialogue with Lebanese human rights organisations, in particular those working on justice-related issues or promoting judicial reform.
53. Financially support justice-related projects carried out by local NGOs or with their cooperation with the aim of increasing their professional, networking and lobbying capacities and assist them in becoming influential independent actors in the field of judicial reform.

## **3. RECOMMENDATIONS TO CIVIL SOCIETY**

We recommend that the Lebanese civil society:

54. Consult with each other and coordinate their positions in accordance with international standards related to justice matters and agree on common objectives.
55. Strengthen the role of the Bar association with regard to the supervision of the impartiality of the judiciary by publishing in particular annual reports on the judiciary and by encouraging lawyers to resort to international human rights law in their work.
56. Establish a Committee comprising lawyers and representatives of Lebanese NGOs with the task of drafting a common programme of action to achieve a substantial judicial reform and a lobbying strategy aimed at parliamentarians, governmental actors and European institutions.
57. Elaborate and implement joint actions and programmes aimed at raising awareness amongst the general population about the issue of the independence and impartiality of the judiciary and at promoting them as essential tools for the protection of the rights and freedoms of all individuals.



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