

## Lebanon

### Report on the Independence of the Judiciary and the Right to Fair Trial in Lebanon

July 2020

The Legal Agenda (LA) is a Beirut-based non-governmental, non-profit organization that addresses issues of judicial activity, reform, and transformation in the context of social and political change in the Arab world. We aim to challenge the conventional wisdom that the law is a “technical” matter of little social influence. This “technical” definition hinders public accountability, undermines a rights-based discourse of change, and ignores that judicial activity can be a tool for improving the position of marginalized groups in society.

We, on the other hand, argue that law is a key tool for shaping society and establishing various forms of control over marginalized groups. By monitoring legal developments and public policy in Lebanon and the rest of the Arab world, we aim to remove the ideological barrier between law and society. We hope to turn legal activity from an abusive tool in the hands of the authorities into an emancipatory one for disadvantaged groups including women, workers, refugees, and LGBT.

In 2014, the LA launched the Civil Observatory for an Independent and Transparent Judiciary, the third such observatory in the Arab world following those in Tunisia and Morocco. It has two main focuses, the first being monitoring the work of the courts through the judgments they issue and through direct observation of hearings. In this regard, the observatory depends on the initiative of its staff and on people working in the judiciary and litigants to draw the observatory's attention to certain issues or practices. To this end, the observatory selects a list of courts to cover, giving priority to the cases that are most relevant to the sectors of society most susceptible to exploitation and abuse.

Between 2014 and 2018, the LA also developed a draft law on judicial independence and transparency. The bill was adopted by the Civil Coalition to Support the Independence and

Transparency of the Judiciary, a network composed of 28 organizations,<sup>1</sup> and then submitted by nine MPs<sup>2</sup> to Parliament on September 6, 2018. On September 12, 2019, the bill was referred to the Administration and Justice Committee and the Prime Minister's Office. The former began debating it on December 3, 2019,<sup>3</sup> in the wake of the uprising that Lebanon has been witnessing since October 17, 2019, which has raised the slogan "Judicial Independence Immediately".

This submission aims to highlight the obstacles in the texts and in practice that prevent the achievement of an independent judiciary, in addition to the violations of the right of litigation, which the LA has placed at the heart of its work.

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The Arab NGO Network for Development (ANND) is a regional network, working in 12 Arab countries with nine national networks (with an extended membership of 250 CSOs from different backgrounds) and 23 NGO members. ANND was established in 1997 and its headquarters is located in Beirut, Lebanon since 2000.

ANND aims at strengthening the role of civil society, enhancing the values of democracy, respect of human rights and sustainable development in the region. ANND advocates for more sound and effective socio-economic reforms in the region, which integrate the concepts of sustainable development, gender justice, and the rights-based approach.

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<sup>1</sup> KAFA (Enough) Violence & Exploitation, the Lebanese Association for Democratic Elections (LADE), ALEF Act for Human Rights, the Restart Center for Rehabilitation of Victims of Violence and Torture, the Association of Justice and Mercy (AJEM), Ruwad Al Houkoug, the Legal Agenda, Committee of the Families of Kidnapped and Disappeared in Lebanon, Lebanese Physically Handicapped Union, Lebanese Labor Watch, Skoun: Lebanese Addictions Center, Green Line, Umam Documentation and Research, the Arab NGO Network for Development, Badael, the Masar Association, Consumers Lebanon, Collective for Research and Training on Development-Action: the "My Nationality is a Right for Me and My Family" campaign, SMEX, Helem, Sakker El Dekkene, Maharat News, MARCH, Fe-Male, the National Federation of Worker and Employee Trade Unions in Lebanon (FENASOL), Beirut Madinati, Public Works, and the Insan Association.

<sup>2</sup> George Okais, Chamel Roukoz, Najib Mikati, Paula Yacoubian, Michel Moussa, Ali Darwish, Yassine Jaber, Oussama Saad, and Fouad Makhzoumi.

<sup>3</sup> During the session of December 3, 2019, the Administration and Justice Committee formed a subcommittee and referred the bill to it for study.

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## **Report on Judicial Independence and the Right to a Fair Trial in Lebanon**

### **The Right to a Fair Trial by a Competent, Independent, and Impartial Tribunal Pre-Established Under the Law (Article 14.1 of the ICCPR)**

1. The Preamble of Lebanon's Constitution enshrines the Universal Declaration of Human Rights (UDHR) and the international covenants. Lebanon has also ratified the International Covenant on Civil and Political Rights (ICCPR).
2. Article 10 of the UDHR and Article 14 of the ICCPR guarantee the right to a fair trial before an independent and impartial tribunal.
3. An independent judiciary is one of the main guarantees for the right to a fair trial.
4. Although the Constitution enshrines both the principle of the separation of powers (§5 of the Preamble) and the independence of judges and the judiciary (Article 20), Lebanon's judicial system remains far from independent.
5. The restrictions on the judiciary's independence can be seen in the violations of its various aspects, namely the principle of the natural judge, the guarantees of institutional and individual independence, and the impartiality of the courts, and in the violations of the standards of the concomitant principle of judges' accountability.

#### **a) The natural judge principle and the exceptional courts**

6. The principle of the natural judge is a fundamental guarantee of a fair trial. Nevertheless, exceptional courts still exist in Lebanon.
7. The Justice Council is one such court. It is competent to examine cases threatening national security internally and externally. It is a distinctly political court as cases are referred to it by a discretionary cabinet decree in blatant violation of the separation of powers principle.
8. The Military Court<sup>4</sup> is another exceptional court and enjoys wide jurisdiction.<sup>5</sup> It hears all cases wherein a member of the military is a party, as well as cases concerning terrorism and similar matters. Civilians are often tried in this court. Most of the court's judges are officers in the military or security agencies. During January and February 2016, following outrage over the light sentence

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<sup>4</sup> The court is regulated by Law no. 24 of 1968.

<sup>5</sup> The court's jurisdiction includes criminal cases concerning members of the military, Internal Security Forces, or General Security or civilian Ministry of Defense or Military Court workers, as well as crimes concerning national security or the interests of the military, the Internal Security Forces, or General Security.

given to former minister Michel Samaha,<sup>6</sup> who was charged with transporting explosives and conspiring to commit terrorist acts, and the subsequent decision releasing him,<sup>7</sup> Parliament's Administration and Justice Committee began debating two bills<sup>8</sup> that had been pending in its drawers for years. One, submitted by MP Elie Keyrouz on April 22, 2013, is the only bill to limit the Military Court's broad power to try civilians. However, no amendment was made in this regard. More gravely, anti-government protesters and journalists have been referred to it. Following the summer 2015 uprising, when Lebanon witnessed widespread protests against the government because of massive corruption in the waste management sector,<sup>9</sup> 51 people were prosecuted in this court, as documented by the Lawyers' Committee to Defend Protesters. So far, 15 people have been prosecuted in it since the beginning of the October 2019 uprising against corruption and the ruling class.

Similarly, on March 7, 2019, the court [sentenced journalists Adam Shamsuddin and Fidaa Itani in absentia to three months of imprisonment](#) for statements on social media deemed damaging to the reputation of a security agency, namely State Security. Days later, MP Paula Yacoubian announced her submission of a bill banning the trial of journalists and civilians in the military courts. This bill was referred to both the National Defense Committee and the Administration and Justice Committee but has not begun to be studied.

9. Sectarian courts still have jurisdiction over cases concerning personal status and family matters.

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<sup>6</sup> On May 13, 2015, the Military Court convicted former minister Michel Samaha of transporting explosives from Syria to Lebanon and conspiring to commit terrorist acts. The judgment was distinguished by the light prison sentence (four and a half years) considering the gravity of the acts, which the court handed down after acquitting him of terrorism and attempted murder.

<sup>7</sup> The Military Court of Cassation then issued a decision to release him. This it did after finding that its earlier decision to overturn the judgment on the basis of Samaha's acquittal of some of the crimes effectively overturned the entire judgment, including his sentence and, by extension, his deprivation from civil rights.

<sup>8</sup> The first was former minister of justice General Ashraf Rifi's bill to transfer terrorism cases from the Military Court to courts specialized in terrorism. The bill removed numerous powers from the Military Court in the realm of terrorism crimes but did not address its jurisdiction in other matters that constitute the bulk of its work and are more relevant to litigants in general. The most important are cases over which the court has jurisdiction because a military member or civilian is being prosecuted for a crime committed against a military member, usually on the basis of social relations that have nothing to do with military work.

The second bill, submitted by Elie Keyrouz on April 22, 2013, is the only bill to significantly restrict the Military Court's jurisdiction over civilians. Its first article explicitly amends the Military Court's subject-matter jurisdiction, limiting it to "military crimes ... in relation to the military personnel referred to it". The grounds for this article are that "trying a military member (in a dispute with a civilian) before a military judiciary composed mostly of military judges provides unjustified protection for this military member. It constitutes an exception that contradicts general penal principles and an attack on the principle of equality among citizens before the law and justice".

<sup>9</sup> "[Ma'arik al-Nufayat al-Mutasha'iba: Hayya 'ala al-Farz](#)" ["The Ramified Garbage Battles: Come to Sort"], *The Legal Agenda*, issue 31, August 2015.

These courts, like the regular judiciary, lack guarantees of independence, and the judges appointed in them are not required to have a law degree.

### The Administrative Courts

10. In the administrative courts, chamber presidents have broad discretion to appoint the members of the bench examining each case. Although the chamber president must appoint the rapporteur judge for the case as soon as the initial investigations are finished, he or she does not have to appoint the other judges participating in the judgment at that time. Consequently, the chamber president often appoints them at the last minute. This puts pressure on those judges, who have insufficient time to view the case, and therefore endangers litigants' rights. Moreover, the chamber president has broad discretion to change these judges after appointing them. This situation also clearly conflicts with the natural judge principle and, in particular, the right to be tried in a pre-established court.

### **b) Institutional independence**

11. Institutional independence refers to the independence of the judiciary as an institution from any interference, influence, or pressure from another branch of authority (whether executive or legislative).

### The Judicial Courts

12. The executive branch still plays a key role in appointing and transferring judges in judicial courts.

13. Judges are appointed or transferred via a cabinet decree. Hence, the power of the Supreme Judicial Council (SJC) to determine the judicial personnel charts is ineffective as it must obtain the consent of all the executive authorities who sign the decree (ministers and the president of the republic) to pass its proposal.<sup>10</sup>

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<sup>10</sup> In an interview with the LA on March 1, 2016, former SJC president Jean Fahd stated that "The judicial personnel charts are the basis of any process of change. However, the SJC lacks a legal basis enabling it to carry them out independently of the executive branch's interference. The law requires the SJC to present the draft charts to the minister of justice and then convene a joint session with him if he disagrees with the council. Additionally, they must be issued via a decree, which means getting the approval of all the executive authorities whose signature must be obtained. Any minister can refrain from signing the decree, blocking the charts. This has happened repeatedly".

In October 2017, the personnel charts decree was issued. The media dubbed them the “three-list charts” as the SJC had based the draft on three lists sent to it by the president of the republic, the prime minister, and the Parliament speaker, which named judges and the positions these figures wanted them to occupy. This decree came after seven years during which more than five drafts prepared by the SJC were aborted because one of the political forces rejected them.

14. As the authority in charge of safeguarding the proper administration of justice and the judiciary’s independence, the SJC should be consulted about any proposed law or decree concerning the judicial judiciary (Article 5 § G of the Judicial Judiciary Organization Law).

15. On July 18, 2017, a law was adopted including amendments affecting judges’ annual holiday and granting the government the power to abolish the Judges’ Cooperation Fund and raise the salary of first-class state employees without any accompanying increase in judges’ salaries as set in late 2011. This conflicts with the separation of powers principle and Article 20 of the Constitution, which enshrine the judiciary as a branch of government and therefore require parallelism between the wages of judges and MPs or ministers.

16. For the selection of SJC members, the Taif Agreement<sup>11</sup> stipulated that a number of them should be elected by the judges. However, to date, eight of its ten members are appointed directly or indirectly by the executive branch, which casts doubt over the SJC’s independence. The two remaining members are elected by judges from the Court of Cassation, and only its chamber presidents may run. Thus, both the right to elect SJC members and the right to run for the position are highly restricted.

17. Other judicial institutions, such as the Judicial Inspection Authority and the Institute of Judicial Studies, are still overseen by the Ministry of Justice (MoJ) rather than the SJC.

### The Administrative Courts

18. The State Council’s Bureau (SCB) is the equivalent of the SJC for the administrative courts (which hear cases against the administration). Its members are not elected, so judges have no role in the selection process. Judges of administrative courts are appointed by cabinet decree<sup>12</sup> based on the minister of justice’s proposal after approval by the SCB. Unlike in the appointment of judicial judges, the law does not address the possibility of disagreement between the SCB and the minister. This increases the executive branch’s influence over the administrative courts.

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<sup>11</sup> The Taif Agreement, ratified by the Lebanese Parliament on November 5, 1989, is considered to have put an end to the Lebanese Civil War and was the basis for the 1990 constitutional amendment.

<sup>12</sup> See articles 6, 7, 8, and 9 of the State Council Regulation.

### c) Individual independence

19. A judge's individual independence has two aspects: external independence, meaning a judge's protection from influence or pressure exercised from outside the judicial institution, and internal independence, meaning a judge's independence from influence and pressure practiced from within the judicial authorities, particularly from the SJC and higher ranked judges.

#### External independence

20. The law provides the judicial institutions only with weak guarantees against external influence and pressures. External independence is therefore limited.

21. The legal framework does not recognize the principle of a judge's immovability.

22. The Criminal Code does not sufficiently protect the judiciary's independence. It defines interference in judges' work as "attempting to sway the judge in writing or verbally", a mere misdemeanor punishable by 20,000 to 100,000 lire (Article 419). MPs George Okais<sup>13</sup> and Paula Yacoubian<sup>14</sup> have each submitted a bill to increase this penalty. On September 17, 2019, the Administration and Justice Committee adopted Okais' bill amended such that it includes a penalty of three months to three years of imprisonment and a fine from ten to one hundred times the minimum wage, though neither bill has been adopted in the General Assembly yet.<sup>15</sup>

23. On May 16, 2017, Minister of Justice Salim Jreissati, in front of the media, called President of the Beirut Criminal Court Hani Abdel Moneim Hajjar and asked him to expedite the judgment on a case that had attracted much public attention.<sup>16</sup> He justified his request on the basis that the case was one of the "hot files".<sup>17</sup>

24. On August 3, 2017, State Council President Shukri Sader was removed from his position via a

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<sup>13</sup> An expedited bill submitted on April 28, 2019.

<sup>14</sup> April 2, 2019.

<sup>15</sup> It was on the agenda of the General Assembly on November 12, 2019, which did not convene because of public pressure opposing the presence of the general amnesty law on the agenda.

<sup>16</sup> The George al-Rif case. See Nizar Saghieh, "'Asharat Ma'awil li-Hadm Istiqlal al-Qada' fi Lubnan: al-Tashkilat al-Qada'iyya 2017" ["Ten Pickaxes to Destroy the Judiciary's Independence in Lebanon: The Judicial Charts 2017"], *The Legal Agenda*, is. 51, September 2017.

<sup>17</sup> In an interview on OTV on June 28, 2017, the minister even provided a theoretical cover for these practices on the basis of Article 66 of the Constitution, which vests the minister of justice with supervising the proper functioning of the judicial process. He added, "Article 20 of the Constitution discusses the independence of the judicial function. That is to say, when the judge is alone with his knowledge, his conscience, his pen, his thought, and his freedom and by his own hand writes a judgment, nobody intervenes".

political decision amidst the judicial strike, which signaled to other judicial officials that they might be removed thusly either with or without a justification. Jreissati himself, in one television interview, attributed Sader's removal to a clash between his personality and the Lebanese presidency's approach, refusing to give any clear compelling reasons in contravention of the Access to Information Law.

### Internal independence

25. While Article 20 of the Constitution clearly stipulates the independence of every judge, it does not declare equality among judges. This silence encourages hierarchical organization inside the judiciary.

26. The procedures of the competitive exams for entrance into the judiciary<sup>18</sup> witnessed a troubling amendment in the 2014 and 2016 exams. The mark allocated to the oral component was increased to one quarter of the total mark in 2014 and one sixth in 2016. This constricts guarantees of an impartial exam by increasing the margin for the examining committees' members to influence the final results based on considerations not related to the candidates' competence, particularly their identities, connections, and affiliations.

27. Appointments to certain positions and specialized committees and secondments are a means of favoring certain judges and undermining the principle of equality among judges, especially as they earn additional salaries for such positions. Usually, the forces influential in these appointments use them to reward judges who concord with them and punish those who do not.

### Judges' fundamental freedoms

28. Judges still lack legal enshrinement of their fundamental freedoms of expression and association even though these freedoms are integral to judicial independence.<sup>19</sup> They are denied these freedoms on the basis of Article 15 of the Public Employees Law,<sup>20</sup> Article 44 and Article 132 of the Judicial Judiciary Organization Law, and the duties and ethics related to the judicial function.

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<sup>18</sup> Entry to the Institute of Judicial Studies generally occurs via a competitive exam or the direct appointment of persons with law doctorates. The first means has constituted the main gateway for recruiting judges, accounting for no less than 80% of all accredited and trainee judges appointed between 1991 and 2017.

<sup>19</sup> Article 8 and Article 9 of the United Nations' Basic Principles on the Independence of the Judiciary.

<sup>20</sup> Nizar Sagheih, "[Ahamm al-Harakat al-Huquqiyya 2018: Nadi Qudat Lubnan Kharaja Ila al-Waqi'](#)" ["The Most Important Rights Movements 2018: Lebanon's Judges' Club Emerges to Reality"], *The Legal Agenda*, April 2019, is. 59.

29. The MoJ's *Basic Principles for the Ethics of the Judiciary* (2005) stipulates that judges have an "obligation of restraint" and ignores their right to establish associations and freedom of expression.

30. On July 17, 2018, days after the resignation of a judge suspected of accepting bribes was announced, Minister of Justice Salim Jreissati issued a circular to judges banning them from communicating with the media on any matter without his permission. He relied on Article 15 of the Public Employees Law, which prohibits state employees from making statements without their administrative boss' permission, in conjunction with Article 132 of the Judicial Judiciary Organization Law (mentioned in the circular), which renders the Public Employees Law applicable to judges insofar as it does not conflict with that law.

31. Nevertheless, the Lebanese Judges Association, established on April 30, 2018, succeeded in obtaining government recognition on January 29, 2019.

32. Article 95 of the Judicial Judiciary Organization Law allows the SJC, outside the context of any disciplinary action, to "decide at any time that an accredited judge is disqualified via an explained decision issued based on a proposal from the Judicial Inspection Authority after hearing the judge concerned". This decision is not subject to appeal or review. Thus, this article violates a judge's right to defense and a judge's independence as it lacks sufficient guarantees against arbitrary punishment.

On March 17, 2017, after a video said to show a judge in a compromising position circulated, the SJC issued a brief statement responding to the comments on it. The statement said that "the SJC's Media Bureau wishes to clarify that irrespective of the veracity of that recording's content, the person concerned is no longer a judge". The LA was told that an SJC member gave the judge the choice of either submitting his resignation or having the SJC, under Article 95, declare him disqualified without any trial.

33. The Disciplinary Council's proceedings are confidential. Judges worried about being victims of arbitrary disciplinary action have no right to publicize any of these proceedings.

34. Judges cannot contest any decisions pertaining to their careers.

#### **d) Court impartiality**

35. In this regard, the Military Court poses the largest problem. It is composed of one civilian judge and a number of officers appointed by the military and is competent to try civilians. Hence, there is legitimate reason to doubt the court's impartiality.

36. Judges are appointed based on political and sectarian quotas, which raises serious concerns about the impartiality of the courts. All high judicial positions are subject to precise sectarian quotas,

and this phenomenon has begun expanding to the lower judicial positions too. This the LA documented via the 2017 personnel charts, wherein the principle of an equal distribution between Christians and Muslims was adopted for many positions.

37. This was confirmed very clearly by Jreissati, who stated at the judicial year inauguration ceremony on October 17, 2017, that one criterion upon which the charts were based was equal distribution.

#### **e) Judges' accountability**

38. The principle of transparency is crucial to the accountability process. Nevertheless, besides disciplinary decisions terminating judges, all inspection and discipline proceedings are completely confidential. This increases litigants' doubts and weakens their trust in the accountability mechanisms, for even the complainant party remains unaware of the outcome of its complaint. Moreover, the Disciplinary Council does not publish its decisions or issue periodic reports about its activity, so it is virtually impossible for citizens to monitor its work.

#### **Second: Violations of the Right to a Fair Trial**

##### **a) Violation of the right to appear before a court and the right to access to justice (ICCPR, Article 14.3)**

39. Lebanon lacks a formal judicial assistance program, which hinders low-income persons exercising their right to seek the courts.

40. The public prosecution follows a practice that prevents foreigners from appearing before a judge and thus benefit from a fair trial. The Director-General of General Security has been granted the authority to deport foreigners before they appear in court. In the first half of 2017, 91 percent of decisions issued by the criminal courts in Beirut, Baabda, and Jdeideh El-Matn in cases related to migrant domestic were in "absentia", thus violating the defendants' right to defend themselves in person.

##### **b) Right to be tried "without undue delay" (ICCPR, Article 14.3)**

41. Lebanese law sets legal limits in criminal and civil cases that are not respected by the courts. Even the Work Arbitration Council, which is required by Law to issue prompt decisions within a period of three months,<sup>21</sup> tends to exceed this period. The average period for decisions is currently around two years and ten months in Beirut Governorate and four years and three months in Mount

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<sup>21</sup> Labor Code, Article 50.

Lebanon.<sup>22</sup>

**c) The right to "be equal before the courts and tribunals" and to enjoy the minimum of guarantees**

42. Security forces and law enforcement officers do not systematically respect guarantees for arrest stipulated by Article 47 of the Criminal Procedures Code, which include the right to contact a family member, meet a lawyer and obtain a medical examination immediately upon arrest. While the Internal Security Forces (ISF) have improved their practices in recent years, other security agencies continue to violate the rights upon arrest: Military Police, General Security and State Security usually do not allow suspects in custody to make a phone call until after their testimony has been recorded and severely limit the right to meet a lawyer. Military Intelligence does not implement Article 47 nor provide any guarantees for people in their custody. The Military Prosecution does not allow defendants to meet with their lawyers until they have been interrogated by the investigation judge, in clear violation of the right to legal counsel.

43. In most instances, interrogations involving women migrant workers are conducted in the absence of an interpreter or lawyer.

**e) The right not to be compelled to testify against oneself (ICCPR, Article 14.3)**

44. Judicial authorities continue to reject the implementation of the Anti-Torture Law. Since the law was issued in 2017, there has not been a single verdict into allegations of torture. There is also a pattern indicating the lack of judicial will to investigate and try torture cases. In December 2019, following the submission of complaints of torture by 17 protesters, the General Prosecutor referred the complaint to the Military Prosecution, an exceptional judicial body that is not deemed to be impartial. The Military Prosecution did not conduct investigations into the complaints, but instead referred them for investigation to the law enforcement bodies suspected of acts of torture in clear violation of the law. Upon refusal of the plaintiffs to provide their testimonies to the security agencies, the Military Prosecution decided to close the investigations without any further action, in clear violation to the obligation to investigate torture complaints.

**f) The right to be presumed innocent until proven guilty (ICCPR, Article 14.2)**

45. In practice, the presumption of innocence seems to be abrogated by long-term pretrial detentions, becoming the rule to be followed. According to a study by Legal Agenda, judicial authorities did not comply with pre-trial detention requirements prescribed in the law: Prosecutors and Judges did not comply with the legal deadlines regulating pre-trial detention, including the maximum period for custody, the prompt appearance before an investigation judge, the immediate trial before the criminal judge, the delay to rule on requests for release and delays in transferring detainees to the courthouses. Prosecutors and Judges issued arrest warrant without providing any

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<sup>22</sup> Based on Legal Agenda's monitoring of all decisions issued by the Labor Arbitration Councils in Beirut and Mount Lebanon in 2018.

reasoning or assessment of the necessity of pre-trial detention, in clear violation of Article 107 of the Criminal Procedures Code. Alternatives to pre-trial detention were also rarely used and implemented. Pre-trial detention was clearly used as a tool for punishment prior to conviction in violation of the presumption of innocence.

#### **g) The right to implementing decisions**

46. The right to a fair trial entails the right to implement decisions,<sup>23</sup> which guarantees the effectiveness of the right to access to justice. However, immunity accorded to the state and other public institutions preventing the implementation of decisions is an obstacle to this right.

47. No mechanism exists to implement court decisions against the public administration and public institutions.

#### **h) The right to two degrees of trials (ICCPR, Article 14.5)**

48. One of the fundamental guarantees of the right to a fair trial is the right to review the judgment before the second instance court. However, the right to appeal the decisions of the Judicial Council is absent despite its competence regarding serious criminal offences against the state.

49. Law 227/2000 stipulates the establishment of administrative first instance courts in Lebanon. However, they have not yet been established, depriving citizens of their right to litigate on two levels in their cases against the state and public institutions.

### **Recommendations**

1. Abolish the Justice Council, and limit the Military Court's jurisdiction to military crimes and remove its power to try civilians.
2. Adopt modern laws to regulate the judicial, administrative, and financial judiciaries that respect international standards of judicial independence.
3. Enshrine the principle of the election of at least the majority of judges in the judicial bodies vested with managing the proper administration of justice and ensuring the judiciary's independence, such as the SJC, the SCB, and the Bureau of the Court of Audit. These bodies should also include people who are not judges to avoid any kind of professional factionalism and consolidate these bodies' role in upholding judicial independence, which concerns all citizens.
4. Strengthen the independence of the judicial institutions: The SJC, not the MoJ, should supervise the judicial institutions, including the Judicial Inspection Authority and the Institute of Judicial Studies. Similarly, the internal and external transparency of these institutions' work must be increased.

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<sup>23</sup> See, ECtHR, *Hornsby vs. Greece*, 19 March 1997, No. 701/613/1995/107.

5. Surround the mechanisms for appointing judges with guarantees ensuring that they occur based on competence and without discrimination, enshrine the immovability of judges, and grant the SJC and equivalent bodies the power to make decisions concerning judges' careers without a cabinet decree. Judges' right to contest decisions concerning their careers must also be enshrined.
6. Guarantee equality among judges by prohibiting secondment to jobs in public administrations and limiting their opportunities to receive allowances for additional work.
7. Establish punishments proportional to the gravity of the crime of interfering in judicial work, including imprisonment.
8. Establish general assemblies in each local court to enable all judges to participate in the administration and improvement of court affairs.
9. Enshrine judges' fundamental freedoms to establish associations and of expression in positive law.
10. Define the "disqualification" stipulated in Article 95 of the Judicial Judiciary Organization Law, restrict it to cases of physical or psychological incapacity, and pair its application with fundamental guarantees to avoid any tendency toward dismissing judges without a fair trial. Enshrine judges' rights of defense and right to be heard in any disciplinary action or evaluation process.
11. Activate judges' accountability and increase transparency in disciplinary matters by defining misconducts in detail, stipulating proportional disciplinary punishments, surrounding disciplinary action at its various levels with fair trial guarantees, and publishing all disciplinary judgments. The Disciplinary Council should also publish periodic reports on its activities.
12. In the administrative courts, enshrine the obligation of the chamber president examining a case to select the other members of the ruling bench as soon as the case is registered.
13. Respect and implement the right to a fair trial. The state must provide a system for judicial aid and all individuals must appear before the court without delay.
14. Ensure the issuance of decisions within legally set time limits.
15. Courts must reject confessions taken under torture during investigations.
16. Courts must respect the presumption of innocence and avoid long pretrial detention periods.
17. Apply Law 227/2000 and establish first instance administrative courts.
18. Ensure the possibility of implementing court decisions against the public administration and public institutions.