

ATTACKS ON JUSTICE – LEBANON (LEBANESE REPUBLIC)

Highlights

Although the Constitution provides for an independent judiciary, in practice it is subject to political pressure; the executive branch is seen to interfere in the appointment and transfer of judges. The government refuses to enforce judgments and orders of the courts not to its liking, which has resulted in the judges involved being penalized. Unduly delayed disciplinary proceedings are also used to intimidate judges. There is no formal separation of powers between the office of prosecutor and members of the judiciary. Prosecutors, who are unlikely to be independent of political influence, may be appointed as judges and vice versa, which has led some prosecutors to unlawfully assume judicial roles. Corruption is widespread in general and remains an important problem within the judiciary. Although the term of office of the Constitutional Council, which oversees the constitutionality of laws, expired in 2003, no new members have been appointed to it. The shortage of judges has caused an increasing backlog of cases. Lawyers are often threatened with disciplinary action. The limited availability of legal aid has impeded the availability of justice to all citizens.

BACKGROUND

Little progress has been made towards the implementation of the *Taef Agreement* of 1989, whose objective was to abolish all sectarian restrictions in the Lebanese legal and political systems. So appointments to public positions, judicial or otherwise, are still made according to religious confessional ratios rather than professional merit.

In July 2000, Israel withdrew from an area that it had occupied since the late 1970s. Following this retreat, Lebanon set out to prosecute members of the **South Lebanese Army** on charges of “collaboration with Israel”. The resulting trials, which were conducted before military courts, were widely regarded as having been conducted without respect for international fair trial standards (see Foundation for Human and Humanitarian Rights, Lebanon, “The State of Human Rights in Lebanon 2002”, www.rcplonline.org/research-study/FHHRL%20Report%202002.pdf). In 2001, municipal elections were held for the first time since 1963 in 64 towns formerly occupied by Israel.

President Émile Lahoud’s term as president, set to end in **November 2004**, was extended for a further three years in **September 2004** when Parliament approved a controversial constitutional amendment allowing him to remain in office. Mr Lahoud enjoys the backing of Syria – which had pushed for an extension of his mandate – and the Lebanese Parliament has a pro-Syrian majority. Earlier, a UN Security Council resolution had called for free and fair presidential elections. In **October 2004 Rafiq al-Hariri**, appointed for a second term in **October 2000**, resigned as **Prime Minister**,

and the following February he was assassinated, provoking anti-Syrian demonstrations and pro-Syrian counter-demonstrations.

Security measures were intensified in the period following the **11 September 2001** attacks, but no specific laws on counter-terrorism were passed. On **28 October 2002**, the **Minister of the Interior** declared that “whole villages were arrested for interrogation in the aftermath of September 11”. In **May 2003**, a military court sentenced eight suspected members of al-Qaida to prison terms of three to 15 years on charges of “forming a terrorist organization with the aim of committing crimes, undermining state authority and attempting to carry out terror acts”. These arrests and convictions were the first to be brought on those charges since 11 September.

While the situation in Lebanon is considered relatively stable, non-governmental groups, including military wings of political groups, fundamentalist groups and Palestinian groups continue to intervene on a regular basis, threatening the security of citizens (<http://www.rcplonline.org/research-study/RCPL%20Report%202003.pdf>). Lebanon’s human rights record remains rather weak in absolute terms (see Report 2003 of Amnesty International, Lebanon Chapter). Recent events include the closure of an independent television station in **2002**, the threatening of opposition figures, arbitrary arrests and detention and allegations of torture. In **April 2004**, the Beirut editor of a London-based newspaper was sentenced to one year in jail and a \$33,000 fine following his conviction on charges of “sabotaging the political, economic and financial security of Lebanon”. In **September 2004**, the death in custody of a “security” detainee raised new concerns regarding the practice of incommunicado detention, torture and ill-treatment of prisoners. In its **March 2004** “Concluding Observations on Lebanon”, the **UN Committee on the Elimination of Racial Discrimination** expressed its concern regarding the rights of Palestinian refugees in Lebanon and discrimination against them ([http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CERD.C.64.CO.3.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CERD.C.64.CO.3.En?Opendocument)). Despite Lebanon’s signature to more than 20 human rights conventions, it has not yet acceded to the *Rome Statute of the International Criminal Court*.

Lebanon was a participant at the two **Arab Conferences on Justice** at which the *Beirut* and the *Cairo Declarations* were adopted, in **June 1999** and **February 2003** respectively. These declarations were aimed at improving judicial independence, and the participants also confirmed their commitment to the *UN Basic Principles on the Independence of the Judiciary*.

JUDICIARY

The Lebanese judicial system is based on the *French Napoleonic Code* ([http://encarta.msn.com/encyclopedia_761564963_4_26/Lebanon_\(country\).html#s26](http://encarta.msn.com/encyclopedia_761564963_4_26/Lebanon_(country).html#s26)). According to Article 86 of the *Code of Civil Procedure* it is comprised of **ordinary courts** at three levels – courts of first instance, courts of appeal and the court of cassation – and **specialized courts**, among which are religious and military jurisdictions, the Constitutional Council, the Council of State, the Judicial Council, the Supreme Council and the Audit Court. Article 20 of the *Constitution* guarantees the independence of the judiciary subject only to the law. The *Judicial Organization Law, Decree Law no. 7855 of 1961*, governs the structure and functioning of the

judiciary (see UNDP, “Program on Governance in the Arab Region”, www.pogar.org). The legal system is regulated by specialized codes of law.

Independence of the judiciary

A number of practices impinge on the independence of the judiciary. As well as the appointment of judges, their transfer, promotion and discipline (see below), the allocation of extra remuneration and administrative support are under the authority of the executive branch in the hands of the Minister of Justice. The budget and administration of the courts also largely fall within the responsibility of the Ministry of Justice, a fact that has given rise to tensions within the judiciary. Proceedings are not always held in court and judges sometimes have to use their offices to conduct proceedings. Furthermore, the courts lack up-to-date technology. Hence all court files are paper-based. All this has led to claims that both individual judges and the judiciary in general need more autonomy. There is no judicial database of court decisions available to judges, who must obtain it from private publishers.

Court staff receive no training, although in theory this should be provided by the **Institute of Judicial Training**. Low salaries have led to accusations that staff “sell” their services to parties and lawyers.

Human rights reports state that the judiciary is subject to political pressure. On **15 November 2002**, the outgoing president of the highest judicial court, **Nasri Lahoud**, called on politicians to stop interfering in the judicial system after he claimed that the courts are in the service of the politicians. In late **2003**, **Mr Osta**, a member of a delegation from the **Beirut Bar Association** council, made a similar statement: “There is no independent judiciary in Lebanon, only a few independent judges!”

The executive branch does not uniformly or consistently abide by the decisions of constitutional, regional and international courts. The government is reported to refuse to enforce judgments and court orders not to its liking, and this has even resulted in the judges involved being penalized in various ways. Unduly delayed disciplinary proceedings are used to intimidate judges: by keeping such proceedings pending, the political authorities maintain pressure on them through the threat of disciplinary proceedings if their decisions do not conform to the will of the government.

Another concern is the absence of any formal separation of powers between the office of prosecutor and members of the judiciary. Prosecutors may be appointed as judges and vice versa. This has led some prosecutors to unlawfully assume judicial roles by issuing decisions and orders.

Appointment of judges

The *Conseil Supérieur de la Magistrature* (**Higher Judicial Council**) is responsible for the operation of the ordinary courts. It falls under the organizational structure of the Ministry of Justice. Exclusively judicial in composition, the Higher Judicial Council deals with judicial appointments, transfers, training and the disciplining of judges. It has been described as having “political jurisdiction” because of the way its members are appointed and more generally because of the way it functions. The **UN Human Rights Committee** had already stated in 1997 that “The procedures governing the appointment of judges and in particular members of the *Conseil Supérieur de la Magistrature* were far from satisfactory” and that “the state party does

not, in many instances, provide citizens with effective remedies and appeal procedures for their grievances”. The committee noted that the procedures governing the appointment of judges were “far from satisfactory” and recommended that “the state party review, as a matter of urgency, the procedures governing the appointment of members of the judiciary, with a view to ensuring their full independence” (see “Concluding Observations of the Human Rights Committee: Lebanon”, 01/04/97, para.15 ([http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.79.Add.78.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.79.Add.78.En?Opendocument))).

Until recently, appointments and transfers of judges have been negotiated between the Ministry of Justice and the Higher Judicial Council. In **December 2001**, *Decree no. 389* gave the council, under certain conditions, ultimate responsibility for making judicial appointments in the case of a dispute.

Constitutional Council

The Constitutional Council is empowered to supervise the constitutionality of laws and to arbitrate when disputes arise over parliamentary and presidential elections. The latest term of tenure for the council’s members, normally six years, expired in **August 2003**. However, as of **February 2004**, no new members had been appointed, with the existing members retaining their positions and continuing to receive their salaries. The council is not generally regarded as independent from the executive: its decision to annul by-election results in the Metn District in **2002** and to allocate the seat to a distant third candidate was criticized on the grounds of gross bias. There is also a tendency for the council to go beyond its remit of examining legislation for conformity with the constitution and to engage in more general principles of law, thus broadening its powers.

Corruption and accountability

Numerous public allegations of corruption continue to be made against members of the judiciary by both individuals and civil society groups. Reports, both from inside and outside the country, denounce the general state of corruption and that of the judiciary in particular. Because their salaries are low, judges are accused of being willing to “sell” their services to parties and lawyers.

A number of procedures enable citizens to file complaints regarding the conduct and functioning of the judiciary. There is no **Office of the Ombudsman** yet (see [Access to Justice](#) below). There is, however, the recusal process – the filing of a complaint with the **Judicial Inspection Unit**, which may lead to administrative sanctions, and action before the **General Panel of the Court of Cassation** in respect of errors made by civil judges. However, to date there is no recorded instance of these procedures ever being utilized. It is widely perceived that the chances of a complaint against a judge being upheld are low or nil, and that the complainant could suffer reprisals at the hands of the judge concerned or his colleagues.

The **Judicial Inspection Unit** has furthermore failed to bring charges in relation to a number of complaints against judges when it arguably should have done so – allegedly because the judges concerned enjoy the protection of influential politicians. Impunity is arguably a fact of life in Lebanon, for judges and other civil servants alike: there is no known case where a judge has been prosecuted, despite allegations of cases of judicial corruption.

The **National Integrity Steering Committee**, established in **2000** to devise a strategy for fighting corruption and developing transparent procedures, reacted negatively to a 2001 **UN corruption assessment report**, which denounced the high level of corruption in Lebanon. The committee, which was reluctant to publish the report because it “tainted Lebanon’s image”, is reportedly still in place today.

Shortage of judges

Due to limited facilities at the **Institute for Judicial Studies**, the number of judicial trainees in recent years has not increased in line with the personnel requirements of the profession. A legislative decree issued in **1983** called for 543 judicial posts. However by **2003** there were only 384 judges and some 1,000 support staff working within the judicial system: 35 per cent of judicial positions remained vacant. On average just 50 to 60 judicial trainees attend the institute every year. The task of appointing judges has been rendered all the more difficult by the sectarian considerations that limit available candidates (see Appointment of Judges, above). The result is that there is now a distinct shortage of judges. This shortage has caused an increasing backlog of cases since the end of the war with Israel in **1998**.

LEGAL PROFESSION

The Bar Association

The Bar Association of Lebanon was created in **1919**. *Decree no. 655* of **1921** organized the profession into two bars, one in **Tripoli** and the other in **Beirut**. Lawyers must hold membership with one of the two bars in order to be able to practise law. There are about 7,500 members of the Beirut Bar and 1,500 in Tripoli. Each bar comprises a **general assembly**, a **council** and a **president**, who is elected together with the members of the council by the general assembly.

The last elections of the **Beirut Bar Association** were held in **November 2003** with **Mr Salim Osta** elected as President. Candidates for this presidency must have been registered with the Bar for at least 20 years. According to practice, the president must be a Maronite Christian.

The *Law Organizing the Profession of Lawyers, No. 8/70* of **11 March 1970**, governs the conduct of the legal profession. Since the law is an Act of Parliament, the Bar Association may not amend it; it can only influence the functioning of the legal profession through the adoption of “internal by-laws”. These internal by-laws generally remain unpublished and therefore unavailable, and have formed the basis of disciplinary proceedings against lawyers (see ICJ/CIJL: November 2003, “Report on Appellate Hearings on Lawyer Muhamad Mugarby, 12th Appellate Panel of the Civil Court of Beirut, 15 October 2003”, http://www.icj.org/news.php3?id_article=3174&lang=en). The Bar Association has recently prepared a **code of conduct** for lawyers that sets forth various standards of professional ethics. Although under Article 79 of the law a lawyer cannot be sued or arrested without the authorization of the Bar Association, this requirement has not always been adhered to in the past – as in the case of a number of lawyers who were among about 250 Lebanese citizens arrested and detained in summer 2001, without

prior authorization of the Bar (see *Avocats Sans Frontières*, “Liban – Rapport de Mission du 6 au 10 septembre 2001”).

Dissatisfied clients and losing parties regularly subject lawyers to complaints and threats of disciplinary action in order to tarnish their reputation or intimidate them. Complaints may be filed against lawyers in two ways: either directly with the president of the Bar Association, or with the office of a judge. In both cases, the matter may be referred to the Bar’s **Disciplinary Council**. Decisions by the council can be appealed to the Court of Appeals.

Cases

Lawyers are often threatened with disciplinary action: according to the Bar, approximately 200–300 complaints are filed against lawyers each year, and only between eight and ten per cent of these are determined to have merit.

The legal requirement that the Bar Association authorize any prosecution against a member of the legal profession has in the past been the main obstacle preventing the prosecution of human rights lawyer **Dr Mugraby**. Dr Mugraby has been subjected to a number of attacks on account of his involvement in human rights issues, his documenting of the disappearance and detention of Lebanese citizens in Syria and his denunciation of the problems affecting the judiciary. He was arrested in **August 2003** by the Lebanese police on apparently politically motivated charges of “impersonating a lawyer”, and held in detention for three weeks, for several days in a prison at the Justice Palace before his transfer to Roumieh prison. Reportedly he was accused of illegally practising law. It is believed that his indictment may be motivated in part by the fact that he stood as a Muslim candidate for the post of President of the Bar Association (http://www.icj.org/news.php3?id_article=3174&lang=en). After the Bar Association authorized a prosecution against Dr Mugraby, he is (as of **October 2004**) currently on bail awaiting trial. Judicial officials have submitted requests for Dr Mugraby to be prosecuted on three previous occasions, notably in response to his denunciation of the problems affecting the judiciary, but each time international human rights organizations have rallied to support him and the requests have been denied. The authorization was obtained in this most recent action against him.

In addition, several members of Dr Mugraby’s law firm assisting in his defence were apparently warned not to represent him, and were threatened with disciplinary action if they did. Dr Mugraby described his prison conditions during his arrest as inhuman. Moreover, he was not allowed to meet in private with his associates at the detention centre, or exchange any documents with them without the prosecutor’s prior approval. Such restrictions, as well as the conditions that preceded and followed his arrest, were clear indications of the political motivation behind his arrest; especially since Dr Mugraby is a well-known human rights activist and a foe of corruption in the judiciary.

In **October 2003** two lawyers faced disciplinary measures for having represented a colleague against the Beirut Bar Association without the latter’s prior authorization in a broad interpretation of Article 94 of the *Law Organizing the Profession of Lawyers* (see International Commission of Jurists letter addressed to the President of Lebanon on **7 October 2003**, “Lebanon – Disciplinary Proceedings against Lawyers Must Be Stopped”, http://www.icj.org/news.php3?id_article=3104&lang=en).

In **March 2004**, a lawyer was shot because of legal proceedings that had been instituted between himself and his attacker (see Daily Star, 11 March 2004, “Lawyer shot for upholding the law”).

PROSECUTORS

The Prosecution system in Lebanon has both judicial and executive branch functions: prosecutors are considered to be judicial but public prosecution remains the responsibility of the Ministry of Justice rather than the Higher Judicial Council (<http://www.pogar.org/publications/judiciary/nbrown/lebanon.html>). Prosecutors in Lebanon are judicial officers, trained as judges, and are directly overseen by the Ministry of Justice. The **Office of the Public Prosecutor** is headed by a judge who is assisted by six other judges. It includes financial and military prosecutors.

The **Cabinet** appoints the **General Prosecutor** (http://www.meib.org/articles/0009_ld1.htm), the **High Judicial Committee**, the **Judicial Inspection Committee** and the **Public Prosecutor**. This system of appointment clearly leaves room for political interference in the judiciary. Furthermore, the absence of any formal separation between prosecutors’ offices and the courts means that prosecutors can be made judges and vice versa (see Independence of the judiciary, above).

The **Prosecutor General of the Republic**, who directs and supervises all the work of the prosecution offices, receives, by law, his instructions from the **Minister of Justice**. This raises serious doubts as to his or her independence from political influence. In **2002** the Prosecutor General stated that “unauthorized statements” (i.e. declarations, TV interviews and press statements), including statements about Syria and the Syria Accountability Act, in the country and abroad, constituted an offence punishable by law. The Prosecutor General has also centralized all prosecution powers into his office, which also is reported to dominate the civil court system.

ACCESS TO JUSTICE

A lack of resources and personnel has contributed to costs and delays within the judicial system. This has impeded the availability of justice to all citizens. According to the **World Bank**, in **2003** “access to justice in Lebanon is in a crisis due to the limited availability of legal aid and public defenders programmes, high court costs, and large sectors of the population in need of legal representation” (see World Bank: “Lebanon – Legal and Judicial Sector Assessment, June 2003”, http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2005/04/20/000090341_20050420134942/Rendered/PDF/321440LE0Legal010judicial0.pdf). There is inadequate administrative support for courts in Lebanon: clerks, experts and other key personnel are overworked and underpaid. This contrasts with the increasing demand for justice from society. Slow litigation has led to a lack of trust in the judicial system. Prohibitively high costs for civil cases are the main impediment to access to justice. In addition, fees are required for a broad range of services: for example, the clerk’s

office requires payment for case registration, a summons fee, a notification fee and a photocopying fee.

By way of exception, it is the **Council of State**, not the Constitutional Council, that reviews the **constitutionality** of a law upon **application by a citizen** (Article 68 of the *Code of Civil procedure*): a lawyer may raise the issue of the constitutionality of a law during court proceedings, in accordance with fair trial standards (Article 7 of the *Code of Civil procedure*). Citizens are granted this right via legal proceedings in which they are engaged; they would otherwise not be able to challenge the constitutionality of a law.

There is no ombudsman yet, despite recent discussions on establishing one. The **Office of the Minister of State for Administrative Reform** (OMSAR) has proposed a draft law to establish an **Office of the Ombudsman**, which would address citizens' complaints regarding dealings with government employees. As of **June 2003**, this draft law had not been adopted by the Council of Ministers.

Legal Aid

In **1993**, the Bar Association created a **Legal Aid Committee** to provide legal representation for indigent participants in civil and criminal cases. This significant positive step conforms to the *Basic Principles on the Role of Lawyers* (http://www.unhchr.ch/html/menu3/b/h_comp44.htm). However, since the committee is funded solely by the Bar, it has limited resources. Due to this funding restriction, the programme has not been widely publicized. As a consequence, many disadvantaged people are represented by lawyers acting on a *pro bono* basis, which in practice means less experienced lawyers.

The government has set a high threshold for the grant of legal aid: only the unemployed poor who can prove that they own no assets qualify. In addition, migrant workers do not qualify for legal aid and therefore do not have access to the courts. This is contrary to principles 2 and 3 of the *UN Basic Principles on the Role of Lawyers* (http://www.unhchr.ch/html/menu3/b/h_comp44.htm).

Fair trial rights

The Judicial Council

The Judicial Council (*Cour de Justice*) is a permanent tribunal of five senior judges that adjudicates on threats to national security. It is comprised of the **first president of the Court of Cassation** (who is also the president of the Higher Judicial Council) and the **four highest-qualified judges** (*juges du grade le plus haut*) who also sit in the Court of Cassation. Its members are all appointed by the executive branch. Upon the recommendation of the Minister of Justice, the Cabinet decides whether a case should be tried before this tribunal. The case is presented by the General Prosecutor. Verdicts are irrevocable and may not be appealed (<http://www.pogar.org/publications/judiciary/nbrown/lebanon.html>).

This court has been described as having “political jurisdiction” due to the way it functions and the way its members are appointed. The **United Nations Human Rights Committee** pointed out as far back as **1997** that the lack of possibility of appeal from this court is contrary to article 14(5) of the *International Covenant on Civil and Political Rights* (ICCPR),² which deals with the right of appeal: 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 committee recommended that a comprehensive review be undertaken of the legal framework for the protection of human rights in Lebanon, to ensure compliance with all of the provisions of the covenant." This has not yet been remedied. ([http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.79.Add.78.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.79.Add.78.En?Opendocument); <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/9fa9a2a029af027bc1256a2b00547f1d?Opendocument>; <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/e8f08be3cbd783bdc1256cec00473376?Opendocument>).

Military tribunals

Military tribunals were set up as a permanent part of the judicial structure in **1967**. Their composition was enunciated in the *Military Justice Law no. 24* of **1968** and has not been reformed since. Military tribunals are competent to try both military personnel and civilians in issues related to national security. They have jurisdiction in respect of misdemeanours and crimes committed by military personnel, civilian employees of the military and internal security forces. Summary procedures are applied that violate the right to fair trial. Military court judgments are in some instances based on statements extracted under torture.

Both the *Criminal Procedure Code* and the *Code of Military Justice* are applicable, although some provisions contradict each other. The judgments of military tribunals cannot be challenged in civil courts. The broad competence of military tribunals has been a subject of concern for some time. In **1997**, the **UN Human Rights Committee** expressed its concern about the "broad scope" of Lebanese military courts' jurisdiction, "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 of the military courts' procedures and verdicts by the ordinary courts. The situation remains unchanged as of **October 2004** ([http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.79.Add.78.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.79.Add.78.En?Opendocument)).

LEGAL REFORMS DURING THE PERIOD

September 2004: Constitutional amendment allowing President to remain in office for further three years beyond his term.

(No other relevant legal reforms were reported during the period.)
