

# **Judicial Accountability in Lebanon: International Standards on the Ethics and Discipline of Judges**

A Briefing paper

February 2017

Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists (ICJ) promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952 and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

® Judicial Accountability in Lebanon: International Standards on the Ethics and Discipline of Judges

© Copyright International Commission of Jurists  
Published in February 2017

The International Commission of Jurists (ICJ) permits free reproduction of extracts from any of its publications provided that due acknowledgment is given and a copy of the publication carrying the extract is sent to their headquarters at the following address:

International Commission of Jurists  
P.O. Box 91  
Rue des Bains 33  
Geneva  
Switzerland

This document has been produced in the frame of the Action entitled "The independence of the judiciary in Lebanon: a social priority" funded by the European Union and implemented by The Legal Agenda in partnership with the International Commission of Jurists, and the Siracusa International Institute for Criminal Justice and Human Rights. The contents of this document are the sole responsibility of the Consortium Partners and can under no circumstances be regarded as reflecting the position of the European Union.



Project funded by  
the European Union



# **Judicial Accountability in Lebanon: International Standards on the Ethics and Discipline of Judges**

A Briefing paper

February 2017



## **Judicial accountability in Lebanon: international standards on the ethics and discipline of judges**

The right to an independent and impartial tribunal is an integral part of the right to a fair trial enshrined in article 14 of the International Covenant on Civil and Political Rights (ICCPR).<sup>1</sup> In order to preserve the public's faith in the integrity of the judiciary, judges individually and the judiciary as a whole must be seen to be independent and impartial. Independence, however, equally requires that judges be accountable for misconduct; such accountability is an element inherent to the rule of law and just as essential to the achievement of an efficient judiciary.<sup>2</sup>

Judicial accountability mechanisms must not be conducted in a way that would infringe upon the independence of the judiciary. The UN Special Rapporteur on the independence of judges and lawyers has stated:

The principle of the independence of the judiciary is not aimed at benefitting judges themselves, but at protecting individuals from abuses of power and ensuring that court users are given a fair and impartial hearing. As a consequence, judges cannot act arbitrarily by deciding cases according to their own personal preferences. Their duty is the fair and impartial application of the law. Judges must therefore be accountable for their actions and conduct, so that the public can have full confidence in the ability of the judiciary to carry out its functions independently and impartially.<sup>3</sup>

In order to prevent the abuse of power and improper influence over judges individually and the judiciary as a whole, "a clear set of standards must be established", "clear mechanisms and procedures established by law, and clear rules on the authority of the supervising parties".<sup>4</sup> To that end, and to ensure a proper balance between independence and accountability, judges should act in accordance with predetermined rules of conduct regulating the duties and responsibilities inherent to their functions, and accountability mechanisms must function independently so as to prevent any interference which may affect the objectivity, transparency and impartiality of the process.

In this memorandum, the ICJ will examine the legal framework and practice relating to the mechanisms put in place to ensure the accountability of the Lebanese ordinary court system and of its judges. In particular, the ICJ will analyse the provisions of Lebanese law regulating the conduct of judges, those establishing the disciplinary processes and measures to hold judges accountable professionally, as well as the framework surrounding their potential civil and criminal liability.

In Lebanon, the framework regulating judicial accountability is severely deficient. The framework regulating judicial ethics and conduct is unclear and incomplete. Legislative Decree No. 150 of 16 September 1983 on the organization of the judiciary (Decree-Law No. 150/83) is the main source of law regulating the ordinary judiciary and establishing the framework regulating judicial accountability. Yet it contains very few provisions on the standards of conduct judges are expected to uphold. The existing "Basic Principles of Judicial Ethics" promulgated in Lebanon are not enforceable, nor do they contain clear and detailed definitions of disciplinary infractions and accompanying proportionate sanctions. The right of judges to the

---

<sup>1</sup> Lebanon has been a party to the ICCPR since 1972.

<sup>2</sup> Report of the Special Rapporteur on the independence of judges and lawyers (2014), UN Doc. A/HRC/26/32 [SRIJL 2014 Report], para. 19. See also ICJ, *Practitioners Guide No. 13: Judicial Accountability* (2016) [ICJ Practitioners Guide No. 13], available at <http://www.icj.org/icj-launches-new-practitioners-guide-on-judicial-accountability/>.

<sup>3</sup> SRIJL 2014 Report, para. 59.

<sup>4</sup> SRIJL 2014 Report, para. 48.

freedoms of expression and association are not enshrined in Lebanese law; on the contrary, Lebanese judges are arbitrarily denied these rights. The law does not guarantee immunity from civil and criminal liability in the circumstances contemplated by international standards. At the same time, Lebanese judges are extremely rarely, if ever, prosecuted in cases of corruption. Moreover, the current system of disciplinary proceedings lacks essential guarantees of independence, impartiality and due process, required by the right to a fair trial before an independent and impartial tribunal. All of these considerations contribute to creating a judicial system that is quick to buckle under external pressure and politics.

This document analyses these issues in the light of relevant international standards. Based on this analysis, recommendations will be formulated with the aim to reform the judiciary in a manner that would render it both accountable and independent.

## **I. Judicial conduct**

### **a) Judicial ethics and disciplinary infractions**

#### ***International standards***

Many international standards affirm, and the ICJ recommends, that professional standards for judges in the discharge of their duties should be set down in law or codes of conduct.<sup>5</sup> Such codes must be sufficiently detailed to ensure that judges have notice of what conduct is prohibited and to prevent problems of arbitrary interpretation.

Codes of judicial ethics can help judges resolve questions of professional ethics, inform the public about the standards of conduct they are entitled to expect from judges, and contribute to public confidence in the independent and impartial administration of justice. At the same time, independence and impartiality cannot be preserved solely through non-binding ethical codes. Statutory and procedural rules, and professional culture, also have an important role with regard to the discipline of judges.<sup>6</sup>

In some jurisdictions, codes of judicial ethics may primarily serve as non-binding guidance. However, when it comes to formal disciplinary proceedings and sanctions of suspension or removal, such proceedings and sanctions must “be determined in accordance with established standards of judicial conduct”.<sup>7</sup> Grounds for and decisions about judicial discipline, including sanctions such as removal, must be based on these clearly established professional standards.<sup>8</sup>

For the framework surrounding the ethics and discipline of judges to be in full conformity with international standards, it should be ensured:

1. that national professional standards for the judiciary are consistent with the relevant international standards, including in particular the Bangalore

---

<sup>5</sup>See e.g. ICJ Practitioners Guide No. 13, p. 25; Judicial Integrity Group, *Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct* (2010), paras 1.1-2.2, 15.1-15.8; SRIJL 2014 Report, paras 72, 78, 210; Human Rights Council, resolution 29/6 (2015), para. 3; UN Office on Drugs and Crime, *Resource Guide on Strengthening Judicial Integrity and Capacity* (2011), pp. 127-131, 134. See also UN Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly Resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985 [UN Basic Principles], article 19.

<sup>6</sup> Consultative Council of European Judges (CCJE), Opinion no. 3, paras 44-45.

<sup>7</sup> UN Basic Principles, Principle 19.

<sup>8</sup> UN Basic Principles, Principle 19. See also CCJE, *Magna Carta of Judges* (Fundamental Principles), para. 19.

Principles of Judicial Conduct (the Bangalore Principles).<sup>9</sup> With the aim of providing an overview of the professional standards that judges should respect to ensure independence and accountability, the Bangalore Principles are organized around six core values: independence, impartiality, integrity, propriety, equality, and competency and diligence;

2. that disciplinary offences are clearly and precisely defined within the law so that judges can know from the wording of the relevant legal provisions what acts and/or omissions would make them disciplinarily liable, and that the sanctions that may result of such acts and/or omissions are clearly prescribed and appropriate with regard the offence committed. The grounds for discipline must not be defined in terms that are so broad as to facilitate their abuse as a means of interfering with the independence of individual judges for wrongful purposes.

### **National legislation**

According to the provisions of Decree-Law No. 150/83, judges, upon their appointment and prior to exercising their functions, must take the following oath: "I swear in the name of God that I will exercise my judicial functions with absolute loyalty and independence, that I will be just with the people and protect their rights, that I will maintain the confidentiality of deliberations, and that I will execute all my duties as an honest and honourable judge."<sup>10</sup> Under article 83 of Decree-Law No. 150/83, "any breach of professional duty, honour or dignity or courtesy" is to be sanctioned through disciplinary measures. Such breaches include unjustified absence, delay in the adjudication of pending cases, unjustified discrimination between the parties, and disclosure of deliberations (confidentiality). The language of article 83 suggests that this list of breaches is not exhaustive.

Article 89 provides that disciplinary sanctions include warnings, reproaches, delay in promotion for up to two years, demotion, suspension for up to one year, dismissal, or removal from office and deprivation of compensation or retirement pension. Particular sanctions are not prescribed for particular kinds of disciplinary breaches, but appear to be available generally to impose at the discretion of the disciplinary decision-maker, i.e. the Disciplinary Council (see section below on disciplinary proceedings and mechanisms).

Moreover, in 2005 the Minister of Justice adopted, with the approval of the Supreme Judiciary Council and the Bureau of the State *Shura* Council, the "Basic Principles of Judicial Ethics" (hereafter, Code of Judicial Ethics). The Code was developed by a committee composed of the Presidents of the HJC, State Council (*Shura* Council) and Judicial Inspectorate, and of the First Honorary President of the Court of Cassation. This Code of Judicial Ethics contains eight principles of ethics for judges: independence; impartiality; integrity; the obligation of restraint; moral courage; modesty; honesty and dignity; and competence and diligence. The Code elaborates on these ethical principles in broad terms to offer some guidance.

The Code of Judicial Ethics has been made available to the judiciary following ratification by the Ministry of Justice, but has not been enacted into law. Therefore, it appears to be intended to be advisory in nature. Indeed, the Preamble of the Code states in part:

---

<sup>9</sup> The Bangalore Principles were drafted by a group of chief justices under the auspices of the UN. They were subsequently endorsed by resolutions of the UN Commission on Human Rights and the Economic and Social Council. See Commission on Human Rights Resolution 2003/43, UN Doc. C/CN.4/2003/L.11/Add.4, and UN Economic and Social Council (ECOSOC), Strengthening Basic Principles of Judicial Conduct, UN Doc. E/RES/2006/23. For drafting history of the Bangalore Principles, see UN Office on Drugs and Crime (UNODC), Commentary on the Bangalore Principles of Judicial Conduct (2007).

<sup>10</sup> Decree-Law No. 150/83, article 46.

[...] a morally binding document is preferable to principles codified in positive legislation because of the broad scope of the subject and its predominantly ethical nature.

And that the Code:

[...] does not necessarily constitute the rules for a comprehensive, deterrent disciplinary system, although it occasionally addresses such rules. The disciplinary system and ethics meet at some points and diverge at others.

It is unfortunately not possible to assess whether or how the Code has been used within disciplinary proceedings, as such proceedings are confidential and the decisions of the Disciplinary Council are not published<sup>11</sup>; nor does it seem that the Judicial Inspectorate explicitly refers to or bases its work on the principles of the Code (see section below on disciplinary proceedings and mechanisms).

### **Assessment**

The ICJ welcomes the fact that a Code of Judicial Ethics was developed in Lebanon by judges, albeit apparently without the desirable widespread consultation within the judiciary. The ICJ also welcomes that the Code itself makes reference to the Bangalore Principles, again albeit with an insistence on "Lebanon's own experience and unique culture, as well as the needs of Lebanese society and the judicial reality".<sup>12</sup> At the same time, the ICJ is concerned that the legislative framework surrounding judicial obligations of ethics, conduct and discipline in Lebanon is inconsistent with international standards in several ways.

Officially, disciplinary action against judges in Lebanon is to be based on the provisions of Decree-Law No. 150/83. In this regard, the ICJ considers that the description of what constitutes a disciplinary infraction, as formulated in article 83 of Decree-Law No. 150/83, is too vague and overbroad to give reasonable notice of what conduct is prohibited for judges. Article 83 states as follows:

Any breach of professional duty, or any act undermining honour, dignity or morals, constitutes misconduct that is punishable by disciplinary action.

In particular, a breach of professional duty includes any unjustified absence, delay in the adjudication of cases, failure to specify a date for the issuance of the decision at the conclusion of the proceedings, discrimination between the parties, and breach of the confidentiality of deliberations.

This appears to be the only definition of grounds for disciplinary action in Lebanese law and, as such, apart from the apparently non-exhaustive list of specific examples set out in the second paragraph, disciplinary liability of judges depends entirely on the interpretation of general terms such as "undermining", "honour", "dignity" and "courtesy" by the disciplinary decision-maker. Given that disciplinary decisions are not published or otherwise made available to all judges in Lebanon (see section below on disciplinary procedures and mechanisms), these cannot be a source of legally precise and precedential interpretations of article 83. This issue is compounded when the disciplinary decision-maker is the executive or is subjected to executive interference (as is the case of the Disciplinary Council in Lebanon, see section below on

---

<sup>11</sup> According to the Arab Center for the Development of the Rule of Law and Integrity (ACRLI), the influence of the Code is not yet well defined. See ACRLI, Promoting the Rule of Law and Integrity in the Arab World: Report on the State of the Judiciary in Lebanon, Section 2-1-3 "Code of Ethics", available at: [http://www.arabruleoflaw.org/Files/PDF/Judiciary/English/P2/Lebanon\\_FinalReportP2S2\\_En.pdf](http://www.arabruleoflaw.org/Files/PDF/Judiciary/English/P2/Lebanon_FinalReportP2S2_En.pdf).

<sup>12</sup> Lebanese Code of Judicial Ethics, Introduction, para. 7.



disciplinary procedure and mechanisms), which in turn undermines judicial independence.

This can result in arbitrary punishment and the threat of discretionary action as a means of unduly influencing judges. Grounds for disciplinary proceedings, suspension or removal must be detailed, clear and transparent, in order to give effect to the principle of security of tenure. Article 83 of Decree-Law No. 150/83 should therefore be amended to ensure that disciplinary offences (as well as the range of sanctions available for each kind of offence, and the principles on which the sanctions are to be determined in particular cases) are specified with sufficient precision and clarity. In particular, the law must explicitly provide that the reasons for suspension or removal from office, prior to the expiration of a judge's term, must be restricted to reasons of incapacity or behaviour that renders the judge unfit to discharge his or her duties, and that judges may only be dismissed on serious grounds of misconduct or incompetence.<sup>13</sup>

As for the Code of Judicial Ethics, the ICJ observes that the degree and nature of its use by the Disciplinary Council is unclear at best. The Preamble to the Code, as noted above, suggests on the one hand that it is not intended to constitute "positive legislation" and that its provisions are not necessarily suitable for use as "rules" in a "disciplinary system". However, sources available to the ICJ have revealed that the Code may have been used in an arbitrary manner in the course of disciplinary action. The ICJ is of the view that, to satisfy international standards for legality (including precision and predictability), transparency, fair trial, and judicial independence, the status and role of the Code of Judicial Ethics in disciplinary proceedings must be clearly and unequivocally set out in Lebanese law.

If the Code of Judicial Ethics is to be applied in the framework of disciplinary proceedings as, in effect, a further codification of legal grounds for sanctions, it would need to be drafted more precisely to indicate which elements of its text constitute punishable misconduct and which elements represent non-binding ethical guidance. In its current form, the Code is not an appropriate legal basis for the imposition of disciplinary measures upon judges, as it does not clearly and precisely determine and define the disciplinary infractions that could trigger disciplinary action. While the Code does incorporate a series of ethical principles that are consistent with the Bangalore Principles, the vagueness of many of its provisions would be cause for concern if applied in disciplinary proceedings, as these provisions could be either deliberately abused or given overbroad interpretation in a manner that would undermine judges' independence and fundamental rights. For example, under the obligation of restraint, it is indicated that the judge may partake in other activities relating to law or to the judiciary's affairs, or any other activity (intellectual, cultural, etc.), as long as these activities do not "dishonour the judiciary".<sup>14</sup> Under the obligation of dignity and integrity, the Code of Judicial Ethics provides that judges must not "be drawn into futile arguments that are ill-suited to the honour of the judiciary".<sup>15</sup> Such expressions and others would be inappropriate to use as legal grounds for disciplinary proceedings as they are vague and could easily be abused or misinterpreted to undermine judges' independence or otherwise used in a manner that would unduly restrict their right to freedom of expression.

While judicial codes of ethics or conduct need not be an exact copy of the Bangalore Principles, the ICJ is of the view that any departure from these principles must be closely scrutinized and formulated in a manner that ensures full compliance with the

---

<sup>13</sup> UN Basic Principles, Principle 18. See also, Human Rights Committee, General Comment No. 32, para. 20.

<sup>14</sup> Lebanese Code of Judicial Ethics, Principle Four: Obligation of Restraint, para. 5. In comparison, the Bangalore Principles provide that the judge may perform a series of law-related activities "subject to the proper performance of judicial duties", and any other activity as long as they "do not detract from the dignity of the judicial office". See para. 4.11.

<sup>15</sup> Lebanese Code of Judicial Ethics, Principle Seven: Honesty and Dignity, para. 9.

requirements of judicial independence and respect for the fundamental rights of judges. In this regard, unlike the Bangalore Principles and the UN Basic Principles on the Independence of the Judiciary, the Code of Judicial Ethics does not explicitly affirm judges' right to the freedoms of expression, belief, association and assembly<sup>16</sup> (see also section below on freedoms of expression and association). It is crucial that the ethical principles established to guide judges' conduct not be susceptible to be abused or misinterpreted as a means of interfering with their independence and, as such, ensure full respect of judges' fundamental rights.

Finally, a broader more representative group of judges should play an active role in the development of any code of judicial ethics or conduct.<sup>17</sup> The current Code of Judicial Ethics was drafted by a very select group of judges (whose appointment, as was seen in the ICJ's memoranda on the High Judicial Council and the management of the careers of judges, involved a high degree of executive interference). Any revision of the Code should be undertaken either by the judiciary itself or in close consultation with the judiciary.<sup>18</sup> Therefore, revisions should be undertaken through broad and meaningful consultation with and participation of a more diverse representation of the judicial apparatus, and not only the Presidents of the HJC, State Council and Judicial Inspectorate, and Honorary President of the HJC.<sup>19</sup>

**In light of the above, the ICJ calls on the Lebanese authorities to amend Decree-Law No. 150/83 and the Code of Judicial Ethics to:**

- i. Ensure that the law clearly and precisely defines the forms of misconduct that may engage a judge's disciplinary liability and, in this regard:**
  - (a) Ensure that all disciplinary offences are clearly and precisely defined within the law so that judges can know from the wording of the relevant legal provisions the acts and/or omissions that could make them disciplinarily liable;**
  - (b) Ensure that the scope of grounds for disciplinary action are not overbroad as to be open to abuse or other wrongful interference with the independence of individual judges;**
  - (c) Ensure that disciplinary sanctions are clearly established and appropriate to the character and gravity of the offence committed;**
  - (d) Specify that suspension or removal from office is an available sanction only for behaviour that renders the judge unfit to discharge his or her duties;**
  - (e) Ensure that the status and role of the Code of Judicial Ethics, if any, in disciplinary grounds and proceedings is clearly explained;**
- ii. Revise the Code of Judicial Ethics and Decree-Law No. 150/83 to ensure that any differences from the Bangalore Principles are consistent with international standards on independence of the judiciary, or the rights or role of judges, and in this regard:**

---

<sup>16</sup> Bangalore Principles, paras 4.6 and 4.13: "A judge may form or join associations of judges or participate in other organisations representing the interests of judges". See also UN Basic Principles on the independence of the judiciary, Principles 8 and 9.

<sup>17</sup> Bangalore Principles, para. 8 of the Preamble: "Whereas the primary responsibility for the promotion and maintenance of high standards lies with the judiciary in each country." See also Recommendation CM/Rec(2010)12 adopted by the Committee of Ministers of the Council of Europe on 17 November 2010 [CoM Recommendation CM/Rec(2010)12], paras 73-74; and Consultative Council of European Judges, Magna Carta of Judges (Fundamental Principles), para. 18.

<sup>18</sup> CoM Recommendation CM/Rec(2010)12, para. 74.

<sup>19</sup> CCJE, Opinion no. 3, para. 48(ii).

- (a) Ensure that the Code of Judicial Ethics and Decree-Law No. 150/83 do not infringe upon the independence of judges and their ability to legitimately exercise their rights and fulfil their role;**
- (b) Ensure that the Code of Judicial Ethics and Decree-Law No. 150/83 recognise and respect judges' rights, such as the rights to freedom of expression and association, and that they do not authorize disciplinary proceedings based solely on the exercise of these rights;**
- (c) Ensure that revisions of the Code of Judicial Ethics and Decree-Law No. 150/83 are elaborated in close consultation and with a diverse representation of the Lebanese judiciary.**

## **b) Freedoms of expression and association**

### ***International standards***

Principle 8 of the UN Basic Principles on the Independence of the Judiciary recognizes that "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".<sup>20</sup> Additionally, principle 9 provides that judges "shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence".<sup>21</sup> The commentary to the Bangalore Principles makes clear that such language includes the right to join or form a trade union or other association of that nature.<sup>22</sup>

No restrictions to these rights may be imposed other than those permitted by the corresponding Articles 18 to 22 of the ICCPR.<sup>23</sup> Such limitations must among other things be lawful, proportionate, and demonstrably justified in a free and democratic society.

### ***National legislation***

Article 13 of the Lebanese Constitution provides that "freedom to express one's opinion orally or in writing, freedom of the press, freedom of assembly, and freedom of association shall be guaranteed within the limits established by law".

However, according to article 15 of Decree-Law No. 112 of 12 June 1959 on the General Status of Civil Servants, civil servants – including judges, to whom this law applies – are prohibited from carrying out any action prohibited by the laws and regulations in force, in particular from "striking or inciting others to go on strike", "joining a professional organization or trade union", or from launching collective

<sup>20</sup> These rights are set out for example in the Universal Declaration of Human Rights, articles 18, 19 and 20; and ICCPR, articles 18, 19, 21 and 22. See also article 8 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), concerning the right to form trade unions and the right to strike. As with the ICCPR, Lebanon has been a party to the ICESCR since 1972.

<sup>21</sup> See also CoM Recommendation CM/Rec(2010)12, para. 25; and European Charter on the Statute for Judges, para. 1.7.

<sup>22</sup> United Nations Office on Drugs and Crime (UNODC), Commentary on the Bangalore Principles of Judicial Conduct (2007), regarding Principle 4.13, p. 116. The Commentary also states, "Given the public and constitutional character of the judge's service, however, restrictions may be placed on the right to strike."

<sup>23</sup> See e.g. Human Rights Committee, General Comment No. 34. Article 19: Freedoms of opinion and expression (2011). This is apart from the exceptional possibility for States to implement certain specific temporary derogating measures, "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed" under article 4 of the ICCPR: see General Comment No. 31: Article 4: Derogations during a State of Emergency (2001).

petitions related to the public sector. Article 340 of the Lebanese Criminal Code further provides that 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.

### **Assessment**

The ICJ is deeply concerned by the prohibition on judges to form and join professional organizations, which runs counter to international law and standards on the right to freedom of association. The law should guarantee the right of judges to freedom of association, subject only to any specific limitations demonstrably "necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others."<sup>24</sup> The law should also recognize the right of judges to form and join professional associations and judges must be able to exercise this right without being subjected to disciplinary or criminal procedures as a result. Professional associations of judges must be able to freely carry out their activities.

Similar recognition and protection should be included in Lebanese law for judges' rights to freedom of belief, expression and assembly.

Article 15 of Decree-Law No. 112 imposes an absolute prohibition on judges to exercise their right to strike, and article 340 of the Criminal Code makes participation by judges in a strike a criminal offence. The rights to form trade unions, to bargain collectively, and to strike receive additional protection under international law, beyond the more general freedom of association; for instance, under article 8 of the International Covenant on Economic, Social and Cultural Rights.

Certain restrictions on the right to strike of judges could be justified, for instance for reasons such as ensuring that individuals have continuous access to the courts (including in order to provide effective remedies and guarantees in relation to human rights).<sup>25</sup> However, if Lebanon considers it necessary to maintain restrictions on the rights of judges to bargain collectively and to strike, the ICJ strongly encourages the judiciary, legislative and executive in Lebanon to jointly consider a means of regulating the relevant rights of judges that is less drastic than the current total prohibition. For instance, a procedure for allowing for partial work stoppages that nevertheless ensure maintenance of essential judicial services in all circumstances, might be capable of achieving such aims with less interference with the affected rights, and would potentially therefore be a more proportionate response.

Lebanese authorities should also consider repealing article 340 of the Criminal Code in so far as it has the effect of criminalizing the right to strike; again, if a prohibition is maintained despite the ICJ's recommendation to reconsider, Lebanon should consider whether non-criminal penalties could achieve any legitimate aims in a less intrusive way than the existing criminal provisions.

### **In light of the above, the ICJ calls on the Lebanese authorities to amend Decree-Law No. 150/83, Decree-Law No. 112, and the Criminal Code to:**

- i. Ensure by law the right of judges to exercise their human rights, including their rights to freedom of expression, association, and assembly, and ensure that the exercise of these rights do not constitute any kind of offence, either disciplinary, civil or criminal;**
- ii. Ensure that any limitation to the exercise by judges of their rights to freedom of expression, association and assembly are, in**

<sup>24</sup> ICCPR, article 22(2); See similarly ICESCR, article 8(1)(a).

<sup>25</sup> In addition to ICCPR, article 22, and ICESCR, article 8, see International Labour Organization, *Freedom of Association: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO* (Geneva, International Labour Office, Fifth (revised) edition, 2006), para. 578.

- iii. **accordance with international law and standards, lawful, proportionate, and justified in a free and democratic society;**
- iv. **Remove the blanket prohibition on judges to join or form professional associations to represent their interests (including in terms of remuneration and working conditions), to promote their professional training and to protect their judicial independence;**
- v. **Consider alternatives to the blanket prohibition on judges' right to strike;**
- v. **Repeal article 340 of the Criminal Code and address any legitimate restrictions of the right to strike of judges through non-criminal measures**

## **II. Disciplinary proceedings and mechanisms**

### ***International standards***

Any disciplinary proceedings and sanctions against judges must be based on established standards of judicial conduct, and sanctions including disciplinary measures or sanctions, suspension or removal, must be proportionate and subject to independent review, preferably through the availability an appeal from any decision of the disciplinary body, to a court.<sup>26</sup> International standards make clear that any allegation of judicial misconduct must be investigated independently, impartially, thoroughly and fairly and adjudicated in the context of fair proceedings before a competent, independent and impartial body, in which a judge's rights to due process are respected.<sup>27</sup> These rights will be discussed in more detail below.

### ***National legislation***

In Lebanon, disciplinary proceedings generally arise from the work of the Judicial Inspectorate, which is the institution in charge of supervising the proper functioning of the judiciary and the work of the judges, staff of the registrar and other affiliated persons.<sup>28</sup>

Decree-Law No. 150/83 establishes the Judicial Inspectorate, which works under the supervision of the Ministry of Justice.<sup>29</sup> The Judicial Inspectorate is composed of one President, four Inspectors General, and six Inspectors, all appointed by Cabinet decree upon proposal of the Minister of Justice, and from among various judicial grades (depending on the position).<sup>30</sup> According to article 113 of Decree-Law No. 150/83, the President and members of the Judicial Inspectorate are bound by professional secrecy.

The Judicial Inspectorate Council (JIC), composed of the President and the four Inspectors General, is the body that decides whether to refer a case to the Disciplinary Council after investigation. The JIC meets at the request of the President, and requires a quorum of the President and two of the Inspectors General. All decisions are adopted through a majority vote and, in case of a tie, the President's vote is decisive.<sup>31</sup>

At the beginning of each judicial year, the JIC is to put forward an annual inspection programme and present it to the Minister of Justice.<sup>32</sup> The President of the JIC is

<sup>26</sup> See ICJ, Practitioners Guide No. 13, pp. 67 to 69; UN Basic Principles, Principles 17 and 20; and CoM Recommendation CM/Rec(2010)12, para. 69.

<sup>27</sup> See ICJ, Practitioners Guide No. 13, pp. 62 to 69.

<sup>28</sup> Decree-Law No. 150/83, article 98. The Judicial Inspectorate has the power to inspect the judicial and administrative courts as well as the bodies of the Ministry of Justice, i.e the Audit Bureau and its subsidiaries and the central departments.

<sup>29</sup> Decree-Law No. 150/83, article 97.

<sup>30</sup> Decree-Law No. 150/83, articles 99, 100 and 101.

<sup>31</sup> Decree-Law No. 150/83, article 104.

<sup>32</sup> Decree-Law No. 150/83, article 105.

responsible for the programme's implementation, and is to personally perform the investigation of the Court of Cassation, the State Council, and the Audit Bureau and General Directorate of the Ministry of Justice, as well as the investigation of "judicial" judges<sup>33</sup> of the seventh grade and above, or assign an Inspector General to do so.<sup>34</sup>

The President of the JIC – by himself or through the Inspectors General or other Inspectors – must promptly investigate any complaints he receives, whether they are received directly or through the Minister of Justice, and he may decide not to pursue a complaint addressed directly to him if he deems it not to be serious.<sup>35</sup>

A standing Disciplinary Council (DC) established under article 85 of Decree-Law No. 150/83 undertakes disciplinary proceedings following the referral of cases from the Judicial Inspectorate.<sup>36</sup> On receiving a referral, the JIC may propose to the Minister of Justice the suspension of the judge referred to the Disciplinary Council.<sup>37</sup>

The standing DC is exclusively composed of judges – a President of one of the Chambers of the Court of Cassation and two Chamber Presidents from the Court of Appeal – who are all appointed to the DC by the President of the HJC at the beginning of each judicial year.<sup>38</sup> The DC is chaired by the Court of Cassation Chamber President, and the President of the Judicial Inspectorate serves as State Commissioner (i.e. effectively, as Prosecutor) before the Council.

Articles 86 and 87 of Decree-Law No. 150/83 prescribe the procedures in disciplinary cases.<sup>39</sup> When a case is referred to the DC by the Judicial Inspectorate, the President of the DC, or a member of the DC assigned to do so, is to conduct the necessary investigations, hear the concerned judge, receive witness testimonies under oath, and then provide a report to the DC expeditiously. Following the receipt of the report, the president of the DC is to immediately provide the concerned judge with access to his or her file, including the report, and to call on him or her to attend a hearing before the DC, which is to be conducted confidentially. The law does not specify the amount of time that must have elapsed between the transmission of the file to the defendant judge and the day of the hearing.

Decree-Law No. 150/83 provides that during the hearing, the judge is to have the right to provide his or her defence against the allegations brought against him or her and may be represented by a lawyer or another judge. If the judge does not appear for his or her hearing, the DC is to examine the case in light of the file it has in its possession; the law does not specify whether the judge must or can provide an explanation of his or her absence. In all cases, the DC is to issue a reasoned decision on the same day as the hearing, or to postpone the decision to the next day at the latest. As mentioned previously, possible disciplinary sanctions include warnings, reproaches, delay in promotion for no more than two years, downgrading, suspension for no longer than one year, dismissal, or removal from office and deprivation of compensation or retirement pension.<sup>40</sup>

---

<sup>33</sup> The term "judicial judge" is used in Lebanese law to distinguish the judges of the ordinary judicial system from, for example, the judges of the administrative or military court systems. Only the "judicial judges" are regulated specifically by Decree-Law No. 150/83.

<sup>34</sup> Decree-Law No. 150/83, article 107.

<sup>35</sup> Decree-Law No. 150/83, article 108.

<sup>36</sup> Decree-Law No. 150/83, article 85.

<sup>37</sup> Decree-Law No. 150/83, article 106.

<sup>38</sup> Decree-Law No. 150/83, article 85. This article also provides that judges of the DC shall recuse themselves in the same manner and on the basis of the same grounds as judicial judges must do in the course of the functions, and in accordance with the same provisions of the Code of Civil Procedure. See Code of Civil Procedure, Decree No. 90/83, articles 120-123. Requests for the withdrawal of a DC judge shall be examined by the HJC within three days.

<sup>39</sup> Trainee judges are subject to all the disciplinary statutes and judicial and criminal procedures as tenured judges. See article 74 of Decree-Law No. 150/83.

<sup>40</sup> Decree-Law No. 150/83, article 89.

The decision is subject to an appeal by the concerned judge or by the President of the Judicial Inspectorate within 15 days of the day the decision is issued. The appeal is heard by the High Body for Judicial Discipline, which is composed of the President of the HJC or his deputy, and of four judges who are appointed by the HJC at the beginning of every judicial year. The High Body for Judicial Discipline applies the same procedures as the DC, but its decisions are not subject to any review, including by the Court of Cassation. The decision is final and directly applicable as soon as the concerned judge is formally informed. If the disciplinary decision includes a sanction of dismissal or removal from office, the fact that disciplinary proceedings have taken place and the sanction imposed are made public knowledge once the final decision is issued. However, the reasons for all decisions by the DC or High Body for Judicial Discipline, and the fact of disciplinary proceedings or imposition of sanctions other than dismissal or removal, are not published.

In addition to all these provisions related to the judicial disciplinary system, article 95 of Decree No. 150/83, which was last amended in 2001, allows the HJC to remove a judge from his office by reasoned decision approved by a majority of eight of its members, upon the proposal of the Judicial Inspection and after listening to the judge in question, but without resort to any disciplinary proceedings. Moreover, the law does not permit judges to appeal such decisions of the HJC.

Finally, in accordance with article 113 of Decree-Law No. 150/83, members of the Judicial Inspectorate themselves can be referred to a disciplinary body by Cabinet Decree upon the proposal of the Minister of Justice, following consultation with the JIC. Any such Cabinet Decree would also appoint the members of the disciplinary body looking into the case (which is somewhat confusingly also referred to as a "disciplinary council" within the legislative framework, although it is different in its means of selection and appointment from the standing Disciplinary Council discussed above). Article 113 specifies that the body is to be composed of a President and two other members, selected from among the Presidents of the Chambers of the Court of Cassation; however it does not specify the authority in charge of this making this selection. The Public Prosecutor or, if not possible, the Attorney General of the Court of Cassation of the highest grade acts as State Commissioner. Apart from the difference in selection and appointment of its members, this body observes the same procedures as prescribed for the Disciplinary Council in relation to all judges, as described above.

### ***Assessment***

The ICJ expresses concern that the current disciplinary procedure lacks sufficient guarantees to ensure fairness and that it does not fully satisfy international safeguards for its independence and impartiality. The ICJ recommends that the disciplinary system be reformed to ensure the fairness of the procedure before independent and impartial decision-making bodies, in the following terms.

#### *1. Independence and impartiality of the disciplinary bodies*

The ICJ is concerned by the lack of independence and impartiality of the disciplinary procedure and mechanisms as a whole, in light of the extent of the role of the executive in these matters. The continuing influence exerted by the executive is inconsistent with international principles on safeguarding the independence of the judiciary.

The members of the Lebanese Judicial Inspectorate are all appointed by Cabinet Decree upon the proposal of the Minister of Justice, and the Inspectorate formally works under the Ministry's supervision; such involvement of the executive allows for an unacceptable degree of risk of executive interference or control. The Human Rights Committee has emphasized that the exercise of power by the Ministry of Justice over judicial matters, including its powers of inspection of the courts, constitutes

interference by the executive and a threat to the independence of the judiciary.<sup>41</sup> This is especially true in the case of Lebanon, where the Judicial Inspectorate plays an essential role in the administration of the judiciary as well as in the disciplinary process: it investigates the proper functioning of the courts and tribunals, as well as complaints against specific judges, and decides whether or not to refer cases to the DC. The role of the Minister of Justice in appointing and supervising the Judicial Inspectorate should be rescinded in order to reduce the potential for executive control and interference and to safeguard the independence of the judiciary. In fact, the most efficient and effective approach may be to place the appointment and work of the Judicial Inspectorate under the purview of the HJC, once the latter is appropriately reformed.

With regard to the members of the standing Disciplinary Council that considers allegations against all other judges, while it is welcomed that the appointment of its members is done by the HJC, the ICJ once again recalls that the HJC must itself be reformed in order to render it an independent and impartial judicial council. In this regard, the ICJ refers to the recommendations it made in its memorandum pertaining to the independence of the Lebanese HJC.<sup>42</sup>

Moreover, it is of great concern that the members of the Judicial Inspectorate are themselves subject to discipline through a process in which the executive is involved. Indeed, the members of the Judicial Inspectorate are referred to a disciplinary council through Cabinet Decree that also establishes the members of this disciplinary council. This means that the body with disciplinary authority over members of the Judicial Inspectorate is established *ad hoc* by the executive every time there is an alleged case of misconduct by the members of the Judicial Inspectorate. This in turn exposes the disciplinary authority, and thus the Judicial Inspectorate, to a risk of undue influence from the executive. Once more, this should fall under the competence of the HJC or other independent body.

## 2. *Disciplinary procedure and due process guarantees*

The Human Rights Committee has held that whenever “a judicial body is entrusted with the task of deciding on the imposition of disciplinary measures, it must respect the guarantee of equality of all persons before the courts and tribunals as enshrined in article 14, paragraph 1, and the principles of impartiality, fairness and equality of arms implicit in this guarantee”.<sup>43</sup> While the ICJ welcomes the procedural guarantees that are provided for in Decree-Law No. 150/83 pertaining to the rights to defence, including the right to have access to the investigation file, the right to be represented by a lawyer or a judge and to make representations at the hearing, and the right to appeal, certain guarantees of due process are lacking.

First, the ICJ is concerned with regard to article 106 of Decree-Law No. 150/83, which allows the Minister of Justice to suspend a judge referred to the Disciplinary Council upon proposal of the JIC. Removal and suspension decisions, even temporary suspension, should follow procedures complying with articles 17 to 20 of the UN Basic Principles on the Independence of the Judiciary and be made on the basis of established standards of judicial conduct (with the evidentiary thresholds and procedures appropriate to an interim, as opposed to final, measure).<sup>44</sup> Article 106 of Decree-Law No. 150/83 does not limit the possibility of suspending a judge who is

---

<sup>41</sup> Human Rights Committee, Concluding observations on Romania, UN Doc. CCPR/C/79/Add.111 (1999), para. 10.

<sup>42</sup> See ICJ, “The Lebanese High Judicial Council in Light of International Standards on the Independence of the Judiciary”, 2016.

<sup>43</sup> Human Rights Committee, *Perterer v. Austria*, Communication No. 1015/2001, UN Doc. CCPR/C/81/D/1015/2001 (2004), para. 9.2. See also European Court of Human Rights, Grand Chamber judgment, *Baka v. Hungary*, Application No. 20261/12 (23 June 2016); and ICJ, Practitioners Guide No. 13, pp. 62 to 69.

<sup>44</sup> See ICJ, Practitioners Guide No. 13, p. 80.



referred to the Disciplinary Council by any conditions or specificities relating to what might bring the JIC to propose such a suspension. It is not clear why the Disciplinary Council itself could not be mandated to making decisions regarding interim suspension, which would better guarantee the independence and impartiality of such decisions. Indeed, Decree-Law No. 150/83 does not even appear to specify any procedure for judges to challenge an interim suspension order through a prompt and fair process of review. This provision should be amended to ensure that the judges' rights are respected, and the power of the Minister of Justice in this regard must be rescinded.

Second, the ICJ is also concerned that Lebanese law does not fully guarantee a judge facing disciplinary proceedings adequate time and facilities to prepare a defence, particularly because it does not provide that the judge should be given adequate time. Indeed, as it stands, the hearing may be held at any time following the provision of access to his or her file to the concerned judge, and the Decree-Law prescribes that the DC must issue a reasoned decision on the same day as the hearing, or at latest the following day. The law should specifically require that enough time be given to the defendant to prepare his or her defence, and that the DC should be given a reasonable amount of time to fully assess the judge's arguments.<sup>45</sup> There should be flexibility in practice such that the length of time can be assessed and adjusted in relation to the particular case, with respect to its complexity and the gravity of possible consequences, for instance. The law should also explicitly state that the individual is to be given access to all potential exculpatory material.

Third, the ICJ considers that judges should benefit from the right to be present during their hearing, which is an essential element of the rights to challenge the case and present their defence.<sup>46</sup> The fact that the DC may immediately examine the case if the judge does not appear for his or her audience, apparently regardless of the reasons for which the judge is absent, runs counter to this fundamental principle. *In absentia* hearings should only be permissible in exceptional circumstances, following for instance evidence that the judge deliberately refused and refuses to be present, after being informed sufficiently in advance of the charges, date and place of the proceedings.<sup>47</sup> Even in circumstances where trials *in absentia* are justified, the basic requirements and rights of a fair trial must be respected, including the defendant's rights to counsel and rights to defend against the charges. The law should be amended to reflect these concerns in the case of judicial disciplinary proceedings.

Fourth, it is also of serious concern that the decisions from the Lebanese disciplinary bodies are not published. The right to a fair trial and international standards on judicial independence and accountability affirm the right to a public judgment, in order to ensure that the administration of justice is public and open to public scrutiny.<sup>48</sup> The absence of any requirement to make reasoned decisions public only deepens the concern with the fact that Lebanese law does not clearly define the types of conduct that may render a judge disciplinarily liable. All disciplinary decisions, once the proceedings duly terminated, should be published in order to provide all judges with a better appreciation and comprehension of reprehensible misconducts, thus reinforcing their independence by strengthening the application of the principle of legality, as well as to give the public confidence that accountability processes are, on

---

<sup>45</sup> See, among others, ICCPR, article 14(3)(b); ECHR, article 6(3)(b); ACHR, article 16(2).

<sup>46</sup> See, among others, ICCPR, article 14(3)(d); ACHR, article 16(3).

<sup>47</sup> Human Rights Committee, *Mbenge v. Zaire*, Communication No. 16/1977, UN Doc. CCPR/C/OP/2, 25 March 1983, para. 14.1. In the same vein, while the European Convention does not expressly provide for the right of the accused to be present, the European Court of Human Rights has concluded that, the combination of article 6(1) and 6(3)(c), (d) and (e), show that a person charged with a criminal offence is entitled to take part in the hearing. See European Court of Human Rights, *Colozza v. Italy*, Application no. 9024/80, 12 February 1985, para. 27.

<sup>48</sup> See, among others, ICCPR, article 14(1); and ECHR, article 6(1); and other international standards set out in ICJ, Practitioners Guide No. 13, pp. 73-76.

the one hand, holding judges properly to account in cases of misconduct and, on the other hand, are not being abused in order to undermine independence and impartiality of the judiciary.

Fifth, the current system falls short of international standards and best practices as regards the possibility of appealing all disciplinary findings, decisions and sanctions before a court or other independent and impartial review body.<sup>49</sup> While judges are allowed to make appeals before the High Body for Judicial Discipline, the members of this body are appointed by the HJC and led by the President of the HJC. In Lebanon, as discussed previously, the President of the HJC is not appointed in an independent manner free from executive influence, nor is the HJC composed of independent members. This in turn may affect the independence and impartiality of the High Body for Judicial Discipline and, consequently, adversely impact the independence and impartiality of any appeal process.<sup>50</sup> Once again, it is therefore crucial that the HJC be reformed in the manner recommended by the ICJ in its memorandum on the HJC.

Sixth, international standards provide that decisions to discipline a judge must be based on established standards of judicial conduct and that sanctions must be proportionate.<sup>51</sup> Article 89 of Decree No. 150/83 does not meet this requirement. The law must prescribe that the sanctions imposed be proportionate to the misconduct committed. The law must also ensure that judges may only be dismissed on "serious grounds of misconduct or incompetence, in accordance with fair procedures ensuring objectivity and impartiality set out in the constitution or the law".<sup>52</sup> The law should protect judges from the possibility of being removed for *bona fide* errors or simply for disagreeing, in good faith, with a particular interpretation of the law preferred by the executive, legislature, or other non-judicial entities.<sup>53</sup>

Finally, the ICJ is particularly concerned about article 95 of Decree-Law No. 150/83, which offers no such safeguards and opens the door to the risk of dismissal with no possibility of appeal. Article 95 provides as follows:

Outside of all disciplinary action, the [HJC] may – at any time – decide to dismiss a judge by reasoned decision adopted by a majority of eight of its members, upon the proposal of the Judicial Inspectorate and after hearing the judge in question.

Article 95 does not provide any information on what type of conduct could lead the Judicial Inspectorate to make such a proposal and the HJC to approve the removal, leaving wide berth and discretionary power to do so.<sup>54</sup> Moreover, it does not allow judges to benefit from their rights to a defence, as required by international standards. For instance, the Human Rights Committee stated: "The dismissal of judges by the executive, e.g. before the expiry of the term for which they have been appointed, without any specific reasons given to them and without effective judicial

---

<sup>49</sup> Un Basic Principles, Principle 20; and ICJ, Practitioners Guide No. 13, pp. 67 to 69.

<sup>50</sup> In one known case, the High Body for Judicial Discipline, headed by the President of the HJC, revoked a decision to dismiss a judge from service for his involvement in a case of bribery, and reduced the sentence to a demotion of four grades. See Legal Agenda, "Lebanon's Experimental Judicial Reforms: Trial or Error?", 17 February 2014, available at <http://english.legal-agenda.com/article.php?id=587&lang=en>.

<sup>51</sup> ICJ, Practitioners Guide No. 13, pp. 8-14, 26.

<sup>52</sup> Human Rights Committee, General Comment No. 32, para. 20. ICJ, Practitioners Guide No. 13, pp. 22 to 27.

<sup>53</sup> ICJ, Practitioners Guide No. 13, pp. 24, 30.

<sup>54</sup> Article 95 was used for the first time in November 2013, when a judge reportedly resigned after being summoned by the HJC in this context. His resignation was approved by then Minister of Justice Shakib Qortbawi. The alleged conduct which led to the summon is unknown to the public. Both the President of the HJC and the Minister of Justice at the time were in favour of the application of this provision. See Legal Agenda, "Lebanon's Experimental Judicial Reforms: Trial or Error?", 17 February 2014, available at: <http://english.legal-agenda.com/article.php?id=587&lang=en>.

protection being available to contest the dismissal is incompatible with the independence of the judiciary.”<sup>55</sup> Judges are therefore not immune from arbitrary decisions that may be imposed, for example, as punishment for lack of submission to political authorities. The ICJ is of the view that this provision should be abrogated entirely.<sup>56</sup>

**In light of the above, the ICJ calls on the Lebanese authorities to amend Decree-Law No. 150/83 to:**

- i. Ensure that the disciplinary procedure does not undermine the independence and impartiality of the judiciary, and to this end:**
  - (a) Proceed to the reform of the HJC, as recommended by the ICJ in its memorandum pertaining to the independence of the HJC in light of international standards, in order to ensure its independence and impartiality;**
  - (b) Ensure that, once reformed, the HJC has oversight over the entire disciplinary process and, in this regard place the Judicial Inspectorate under the purview of the HJC, including by giving the HJC the power of appointing the members of the Judicial Inspectorate and overseeing its functioning;**
  - (c) Reinforce the independence of the Judicial Inspectorate by ensuring that its members benefit from the same guarantees of due process and fair hearing as all other members of the judiciary in the framework of disciplinary proceedings, particularly by amending article 113 of Decree-Law No. 150/83 in order for members of the Judicial Inspectorate to have their disciplinary hearings heard by an effectively independent and impartial body substantially if not exclusively made up of judges;**
  - (d) Rescind the powers of the Ministry of Justice in relation to the disciplinary procedure, including the decision-making power to initiate disciplinary investigations, refer matters to the DC, and suspend judges pending a disciplinary decision;**
- ii. Ensure that disciplinary procedures against judges guarantee judges all rights to a fair hearing before an independent and impartial body and to due process guarantees, as well as the right to have decisions and sanctions reviewed by an independent, impartial and judicial body, in line with international standards, including by:**
  - (a) ensuring that any decision on immediate suspension is based on clear and objective grounds and subject to a prompt, fair and transparent review procedure that protects the rights of the concerned judge and, in this regard, amend article 106 of Decree-Law No. 150/83 to this effect. Given its interim character, the salary and other benefits of the concerned judge should be maintained during any interim suspension;**
  - (b) guaranteeing respect for the right to adequate time and facilities to prepare a defence, including by ensuring the timely provision of all relevant information relating to case, including any exculpatory information, and giving the disciplinary decision-maker reasonable time to fully consider the defence arguments before issuing a decision;**

---

<sup>55</sup> Human Rights Committee, General Comment No. 32, para. 20.

<sup>56</sup> This recommendation was also made by the ICJ in its 2016 memorandum entitled “The Career of Judges in Lebanon in light of International Standards: Judicial selection appointment, promotion and security of tenure”, as it is a clear affront to the principle of security of tenure.

- (c) prohibiting *in absentia* hearings in the absence of clear and unequivocal refusal of the defendant judge to be present and providing that, in the rare cases where *in absentia* hearings are permitted, the right of the defendant judge to a fair disciplinary hearing shall be respected, including but not limited to the right to be represented by counsel;
- (d) providing reasoned decisions for disciplinary sanctions must be published upon their determination;
- (e) ensuring the right of the judge to appeal against any disciplinary decision or sanction to an independent tribunal not institutionally linked or subordinated to the President of the HJC, until the HJC is itself reformed;
- (f) unequivocally abrogating article 95 of Decree-Law No. 150/83.

### III. Civil and criminal liability

#### **International standards**

International standards generally provide that judges should benefit from personal immunity from ordinary civil damages proceedings, and that criminal prosecutions should be subject to substantial procedural protections to prevent their abuse.<sup>57</sup> Judges should not have to operate under the threat of a spurious civil suit or criminal sanction. The presence of such considerations may affect their judgment and, in turn, diminish their impartiality. The Basic Principles on the Independence of the Judiciary, for instance, provide: "judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions".<sup>58</sup> Judges should not be exposed to criminal liability merely for handing down judgments that are eventually overturned, or committing legal errors in their decisions, as this would endanger the independence of the judiciary.<sup>59</sup>

Judges should remain liable for ordinary crimes not related to the content of their orders and judgments. In such cases, of course, the proceedings must remain in full compliance with the requirements of international law, including all guarantees of fair trial. In addition, as a safeguard against abuse of such proceedings, the permission of an independent authority such as a judicial council may need to be obtained before any arrest or charge.

Furthermore, as the UN Special Rapporteur on the independence of judges and lawyers has stated, "total immunity would only nourish distrust among the public towards the justice system as a whole"<sup>60</sup>, and it is incumbent on all States to take the necessary measures to combat impunity for human rights violations, judicial corruption, and similar such misconduct. The Human Rights Committee has also recommended that States should take measures to eradicate corruption by investigating, prosecuting and punishing alleged perpetrators, including judges.<sup>61</sup> It has further stated that "if corruption is established, the officials concerned should face criminal and not only disciplinary sanctions".<sup>62</sup>

<sup>57</sup> See ICJ, Practitioners Guide No. 13, pp. 17 to 30, 41 to 42, 76 to 79.

<sup>58</sup> Un Basic Principles, Principle 16.

<sup>59</sup> See ICJ, Practitioners Guide No. 13, pp. 27 to 30.

<sup>60</sup> SRIJL 2014 Report, UN Doc. A/HRC/26/32, para. 52.

<sup>61</sup> See, for example, Human Rights Committee, Concluding observations on Turkmenistan, UN Doc. CCPR/C/TKM/CO/1 (2012), para. 13; and Cape Verde, UN Doc. CCPR/C/CPV/CO/1 (2012), para. 15.

<sup>62</sup> See Human Rights Committee, Concluding observations on Yemen, UN Doc. CCPR/C/YEM/CO/5, para. 17.

### **National legislation**

Articles 741 and following of the Code of Civil Procedure address State liability resulting from acts committed by “judicial” judges. Under Lebanese law, judges are potentially civilly liable in cases of “miscarriage of justice”, “deception”, “fraud”, and “bribery”, as well as “serious errors which should not have occurred had the judge exercised a normal degree of attention to his or her duties”. Suits are to be brought before the Plenary Assembly of the Court of Cassation and, if the complaint is substantiated, the State is held liable for damages. The State then has recourse against the offending judge. During this procedure, the judge can intervene voluntarily and present his arguments, and must abstain from examining any legal case concerning the party who sued him.

In accordance with the Lebanese Criminal Code, judges can also be held criminally liable. The Criminal Code lists specific crimes related to the status of public officials, which includes judges, including illegal arrests, the acceptance of bribes, kickbacks, bribery or direct or indirect corruption, abuse of power or breach of professional obligations.<sup>63</sup> Moreover, in accordance with the Lebanese Code of Criminal Procedure, the Court of Cassation has jurisdiction to try offences committed by judges, whether committed in the course of their duties or not.<sup>64</sup> Judges can be charged with misdemeanours or felonies committed in circumstances arising from the performance of their duties.<sup>65</sup> The Code of Criminal Procedure elaborates the procedure to be followed in all cases of offences committed by judges.<sup>66</sup>

According to article 344 of the Code of Criminal Procedure, the Court of Cassation has jurisdiction to try offences committed by judges, either outside the context of their duties or when they arise from or were committed in the course of the performance of their duties; the procedure and composition of the bench hearing the case differs in accordance with the status of the defendant judge and whether the offence is a misdemeanour or a felony. In cases of felonies, the First President of the Court of Cassation appoints a judge to investigate.<sup>67</sup> Where it is necessary to arrest the judge in question, the judge conducting the investigation issues an arrest warrant; however, its enforcement requires the approval of the First President of the Court of Cassation.<sup>68</sup> A panel composed of three judges who are at least of the same grade as the defendant judge is appointed by the HJC to perform the duties of an Indictment Chamber<sup>69</sup>; if it decides that there are sufficient evidence to indict the defendant, it refers him or her either to a Criminal Chamber of the Court of Cassation or to the full bench of the Court of Cassation, depending on his or her status.<sup>70</sup> However, if the defendant judge is the President of the HJC, the President of the State *Shura* Council, the Public Prosecutor at the Court of Cassation, the President of the Audit Court, or the President of the Judicial Inspectorate, he or she is tried before a panel composed of five judges appointed by Cabinet Decree, upon the proposal of the Minister of Justice.<sup>71</sup> These five judges are selected from among active or retired judges holding an honorary office, of the 17<sup>th</sup> grade or higher. The Court of Cassation is the highest instance in Lebanon in criminal matters and as such general Lebanese criminal procedure does not generally provide for any further appeal from or review of its decisions, nor is any special provision made in relation to convictions by the Court of Cassation in cases against judges.

---

<sup>63</sup> Law No. 340 of 1 March 1943 [Lebanese Criminal Code], articles 351 and following.

<sup>64</sup> Law No. 328 of 7 August 2001 [Lebanese Code of Criminal Procedure], article 344.

<sup>65</sup> Lebanese Code of Criminal Procedure, article 351.

<sup>66</sup> Lebanese Code of Criminal Procedure, articles 341 and following.

<sup>67</sup> Lebanese Code of Criminal Procedure, article 348.

<sup>68</sup> Lebanese Code of Criminal Procedure, article 348.

<sup>69</sup> Lebanese Code of Criminal Procedure, article 350. The Indictment Chamber is a Civil Chamber of the Court of Appeal, assigned to perform the functions attributed to it by the Code of Criminal Procedure; see articles 135 and following of the Lebanese Code of Criminal Procedure.

<sup>70</sup> Article 350 of the Lebanese Code of Criminal Procedure refers to articles 345 and 346 of the Code.

<sup>71</sup> Lebanese Code of Criminal Procedure, article 354.

## **Assessment**

The scope for civil liability of judges under Lebanese law (via reimbursement to the State) appears to be defined in potentially vague and overbroad terms, particularly in so far as the relevant provisions refer to "serious errors". Such uncertainty as to whether a disgruntled litigant, including the executive government, might pursue proceedings against a judge simply for handing down an unfavourable decision (even if it is overturned) unduly exposes judges to the risk of arbitrary proceedings which can in turn undermine their independence and impartiality. Similarly, the inclusion of the broad category "abuse of power or breach of professional obligations" as possible grounds for criminal proceedings risks exposing judges to criminal responsibility related to the non-malicious legal content of their judgments.<sup>72</sup>

Judges should generally be immune from criminal proceedings in relation to the content of their orders and judgments and the due discharge of their judicial duties.<sup>73</sup> While judges should remain liable for ordinary crimes not related to the content of their orders and judgments, safeguards must be established to prevent the abuse of such proceedings. The scope of civil and criminal liability in Lebanon should therefore be made more precise to ensure that judges are clearly immune from civil and criminal prosecutions with regard to the content of their judgments or the due discharge of their duties, other than in cases of judicial complicity in human rights violations or corruption.

In this regard, while the Criminal Code appears to duly criminalize offences related to corruption and abuse of power, it appears to the ICJ that judges are rarely, if ever, actually criminally prosecuted in cases of alleged corruption. One known case is that of judge Ghassan Rabbah – then member of the HJC and President of a Chamber of the Court of Cassation – who was caught on tape allegedly requesting a one million dollar bribe.<sup>74</sup> While his case was dealt with through disciplinary channels resulting in his dismissal, he was not subjected to criminal charges. Other cases of judicial corruption were also not criminally prosecuted.<sup>75</sup> The ICJ emphasizes that while judges should generally benefit from certain civil and criminal immunities, such immunities should not be abused in a manner as to result in impunity for corruption or complicity in human rights violations.

Finally, the ICJ is concerned with certain elements of the procedure to be followed in cases where a judge may be criminally prosecuted for felonies or misdemeanours:

- Firstly, in such cases, the First President of the HJC – and not the HJC as a whole – both appoints the investigative judge and approves any arrest warrant of a judge. This means that the President of the HJC is personally granted much of the decision-making authority over the investigation in such cases. The First President of the HJC is however appointed by Cabinet Decree upon proposal of the Minister of Justice, which gives rise to reasonable doubt about his independence.<sup>76</sup>
- Secondly, the panel of five judges that is constituted in cases where the defendant is the President of the HJC, State *Shura* Council, Audit Court or

---

<sup>72</sup> See also article 344 of the Lebanese Code of Criminal Procedure, stating that judges may be held criminally liable for offences committed either outside or in the course of the performance of their duties.

<sup>73</sup> Report of the Special Rapporteur on the Independence of Judges and Lawyers, UN Doc. A/HRC/11/41 (2009), paras 66, 98; SRIJL 2014 Report, paras 52, 84, 87.

<sup>74</sup> See Daily Star, "High-ranking judge dismissed over corruption", 29 March 2013, available at: <http://www.dailystar.com.lb/News/Local-News/2013/Mar-29/211854-high-ranking-judge-dismissed-over-corruption.ashx>. Moreover, the disciplinary proceedings themselves should be subject to scrutiny for various alleged violations of due process, including the right to defend oneself and to be heard, which Judge Rabbah alleges not to have benefited from.

<sup>75</sup> In another instance, judges involved in fraud and bribery were dismissed from service; however they were granted their pension which could amount up to USD \$500,000. No criminal prosecution followed. See Legal Agenda, "Lebanon's Experimental Judicial Reforms: Trial or Error?", 17 February 2014, available at: <http://english.legal-agenda.com/article.php?id=587&lang=en>.

<sup>76</sup> See ICJ, "The Lebanese High Judicial Council in Light of International Standards on the Independence of the Judiciary", 2016.

Judicial Inspectorate, or the Public Prosecutor, lacks basic guarantees of independence, as the five judges are exclusively appointed by the executive, thus opening the door for potential interference;

- Thirdly, as the Court of Cassation – which is the highest jurisdiction in Lebanon – has jurisdiction to hear all cases involving offences committed by judges, the Code of Criminal Procedure does not appear to respect the right of a judge to have any conviction and sentence reviewed by a higher tribunal.<sup>77</sup>

The ICJ recalls that – in addition to the right of the individual judge as an individual to all guarantees of fair trial which all persons accused in criminal proceedings should be granted – procedures for cases against judges should also contain all the safeguards necessary to prevent any abuse which might ultimately undermine judicial independence. The Code of Criminal Procedure should be amended to ensure that these guarantees are clearly upheld at all levels of the proceedings in cases of criminal prosecution of judges.

**In light of the above, the ICJ calls on the Lebanese authorities to amend the Code of Civil Procedure and the Code of Criminal Procedure to:**

- i. **Ensure that the circumstances in which judges may be required to reimburse the State for civil damages is limited to human rights violations perpetrated by the judiciary or with judicial complicity, or judicial corruption, if the potential for State recourse against judges is not eliminated entirely;**
- ii. **Ensure that judges enjoy personal immunity from criminal prosecution for acts or omissions related to the exercise of their judicial functions, provided that such immunity is subject to waiver by a court if it determines that the immunity would impede the course of justice and the waiver would not prejudice the exercise of judicial functions, in cases such as of alleged judicial corruption or judicial responsibility for violations of human rights;**
- iii. **Ensure that all judges who have committed serious criminal offences such as corruption and human rights violations are investigated, prosecuted and punished in accordance with international law and standards;**
- iv. **Ensure that judges who are properly criminally prosecuted for felonies or misdemeanours that are unrelated to the exercise of their functions benefit from all the guarantees of fair trial and all the necessary safeguards to prevent any abuse of criminal proceedings and, in this regard:**
  - a) **Ensure that the responsibility to appoint the investigative judge and approve any arrest warrant in such cases is granted to a duly independent and impartial authority and, to this end, ensure that the procedures for the selection and appointment of the President of the HJC are fully transparent and based on detailed and objective criteria;<sup>78</sup>**
  - b) **Ensure that the panel of judges that hears the cases where the defendant is either the President of the HJC, State *Shura* Council, Audit Court or Judicial Inspectorate, or the Public Prosecutor, is appointed by an independent and impartial body, and not as is presently the case exclusively by the executive;**
  - c) **Provide for the right to appeal or review of any conviction and sentence issued against a judge.**

---

<sup>77</sup> ICCPR, article 14(5).

<sup>78</sup> For more details, see the recommendations made by the ICJ in its memorandum entitled "The Lebanese High Judicial Council in Light of International Standards on the Independence of the Judiciary", 2016.





## Commission Members

February 2017 (for an updated list, please visit [www.icj.org/commission](http://www.icj.org/commission))

### Acting President:

Prof. Robert Goldman, United States

### Vice-President:

Justice Michèle Rivet, Canada

### Executive Committee:

Prof. Carlos Ayala, Venezuela

Justice Azhar Cachalia, South Africa

Prof. Andrew Clapham, UK

Justice Radmila Dragicevic-Dicic, Serbia

Ms Imrana Jalal, Fiji

Ms Hina Jilani, Pakistan

Mr Belisário dos Santos Júnior, Brazil

### Other Commission Members:

Professor Kyong-Wahn Ahn, Republic of Korea

Justice Adolfo Azcuna, Philippines

Mr Muhannad Al-Hasani, Syria

Mr Abdelaziz Benzakour, Morocco

Justice Ian Binnie, Canada

Sir Nicolas Bratza, UK

Mr Reed Brody, United States

Prof. Miguel Carbonell, Mexico

Justice Moses Chinhengo, Zimbabwe

Ms Roberta Clarke, Barbados-Canada

Justice Elisabeth Evatt, Australia

Mr Roberto Garretón, Chile

Prof. Jenny E. Goldschmidt, Netherlands

Prof. Michelo Hansungule, Zambia

Ms Gulnora Ishankanova, Uzbekistan

Mr. Shawan Jabarin, Palestine

Justice Kalthoum Kennou, Tunisia

Prof. David Kretzmer, Israel

Prof. César Landa, Peru

Justice Ketil Lund, Norway

Justice Qinisile Mabuza, Swaziland

Justice José Antonio Martín Pallín, Spain

Prof. Juan Méndez, Argentina

Justice Charles Mkandawire, Malawi

Mr Kathurima M'Inoti, Kenya

Justice Yvonne Mokgoro, South Africa

Justice Sanji Monageng, Botswana

Justice Tamara Morschakova, Russia

Justice Egbert Myjer, Netherlands

Justice John Lawrence O'Meally, Australia

Justice Fatsah Ouguergouz, Algeria

Dr Jarna Petman, Finland

Prof. Mónica Pinto, Argentina

Prof. Victor Rodriguez Rescia, Costa Rica

Mr Alejandro Salinas Rivera, Chile

Prof. Marco Sassoli, Italy-Switzerland

Justice Ajit Prakash Shah, India

Justice Kalyan Shrestha, Nepal

Mr Raji Sourani, Palestine

Justice Philippe Texier, France

Justice Stefan Trechsel, Switzerland

Prof. Rodrigo Uprimny Yepes, Colombia



**International  
Commission  
of Jurists**

P.O. Box 91  
Rue des Bains 33  
CH 1211 Geneva 8  
Switzerland

**t** +41 22 979 38 00

**f** +41 22 979 38 01

[www.icj.org](http://www.icj.org)