

The Lebanese State Council and Administrative Courts

A Briefing Paper

October 2018

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Accountability and transparency in public administration is a cornerstone of the rule of law and of democratic governance. Promoting these standards and their practical implementation is not possible without a functioning system of administrative justice, which allows private persons to effectively challenge administrative acts and decisions and holds public authorities accountable for breaches of law and infringements of human rights.

Indeed, administrative acts – which can cover a wide range of issues, including use of public land, expropriations, civil registration, adoptions, protection of the environment, access to information, issuance of business licenses, and more – have the potential of having an enormous impact on the daily lives of individuals. It is thus fundamental that these individuals have the right to appeal the administrative acts and decisions that negatively affect their interests, rights or liberties, and be able to seek redress where public officials exercise their duties in an unlawful or otherwise improper manner.¹ Effective redress should be available through the initiation of an administrative proceeding, before or subject to review by, a competent and independent court or tribunal.

While administrative justice systems greatly vary from one country to another, Lebanese administrative justice is in large part inspired by its French counterpart. These systems are headed by State Councils, which have both advisory and adjudicative roles. The Lebanese State *Shura* Council, which was established by Law No. 10434 of 14 June 1975 (Statute of the State Council), is currently the only administrative jurisdiction in Lebanon. While the last amendments to the Statute of the State Council, by Act No. 227 of 31 May 2000, provide for the establishment of first level administrative tribunals in each of the six provinces (*mohafazas*) of Lebanon, this reform has yet to be implemented. This is because, according to the Statute, the establishment of the administrative tribunals is pending the adoption of a decision by the Minister of Justice upon approval of the State Council Bureau², which has yet to occur. Therefore, to this day, the first instance administrative courts have not become operational.

The State Council plays an important role in the Lebanese judicial framework and represents an effective jurisdiction where citizens can seek to uphold their human rights. For instance, the State Council was called upon and positively responded in a case granting the right to truth of families of the disappeared during the civil war.³ However, the State Council has also been criticized and accused of serving political power at the expense of fundamental freedoms, with certain decisions appearing to undermine, for example, the rights to freedom of expression and freedom of conscience.⁴

In this memorandum, the ICJ analyzes the laws regulating the Lebanese administrative justice system with a view to highlighting the key issues in relation to international standards on judicial independence. Guaranteeing the right to judicial review of administrative acts, before a competent and independent administrative court or tribunal that adheres to fair trial standards, is fundamental to the protection of human rights and the rule of law. As such, in the context of administrative justice, judicial independence is indispensable to effectively hold the government accountable for its decisions, and vital for creating the right conditions for access to justice.

¹ Council of Europe, Recommendation CM/Rec(2007)7 of the Committee of Ministers to member states on good administration, 20 June 2007.

² Law No. 10434 of 14 June 1975 (with last amendments of 2000) [Statute of the State Council], article 34. The State Council Bureau is the judicial council of Lebanon's administrative court system, see below in section I on the State Council Bureau.

³ Lebanese State Council, First Chamber, Decision of 4 March 2014

⁴ See Ghida Frangieh, "Lebanon's State Council: Serving Political Powers at the Expense of Fundamental Freedoms", The Legal Agenda, 6 February 2014, available at: <http://legal-agenda.com/en/article.php?id=2969>.

The right to a fair trial before an independent tribunal derives from international and regional conventions on human rights. Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR) states: "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, *or of his rights and obligations in a suit at law*, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law".⁵ In the same vein, article 6(1) of the European Convention of Human Rights stipulates: "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."⁶

These provisions also constitute the foundation of the right to a fair trial and due process guarantees and have generally been interpreted by human rights bodies – such as the Human Rights Committee and the European Court of Human Rights – as also being applicable in relation to a range of disputes typically treated as falling within the framework of administrative law. For instance, the Human Rights Committee states:

The Committee notes that the concept of a 'suit at law' [...] is based on the nature of the right in question rather than the status of one of the parties or the particular forum provided by domestic legal systems for the determination of particular rights. The concept encompasses (a) judicial procedures aimed at determining rights and obligations pertaining to the areas of contract, property and torts in the area of private law, as well as (b) equivalent notions in the area of administrative law such as the termination of employment of civil servants for other than disciplinary reasons, the determination of social security benefits or the pension rights of soldiers, or procedures regarding the use of public land or the use of private property.⁷

In the same vein, the European Court of Human Rights (ECtHR) considers that article 6(1) of the European Convention on Human Rights applies to administrative proceedings where the outcome of the dispute is decisive for a legal right of the individual, regardless of the character of the authority that is invested with jurisdiction in the matter (ordinary court, administrative body, etc.).⁸ Similarly, both the Inter-American Commission of Human Rights and the African Commission have

⁵ Lebanon has been a party to the ICCPR since 1972.

⁶ See also American Convention on Human Rights, signed at the Inter-American Specialized Conference on Human Rights, San Jose, Costa Rica, 22 November 1969, article 8(1); African (Banjul) Charter on Human and Peoples' Rights, adopted 27 June 1981, article 7(1).

⁷ Human Rights Committee, General Comment No. 32, para. 16. According to the Human Rights Committee, a suit at law can also cover other procedures, but this must be determined "on a case by case basis in the light of the nature of the right in question". The Human Rights Committee continues however as follows: "On the other hand, the right to access a court or tribunal as provided for by article 14, paragraph 1, second sentence, does not apply where domestic law does not grant any entitlement to the person concerned. For this reason, the Committee held this provision to be inapplicable in cases where domestic law did not confer any right to be promoted to a higher position in the civil service, to be appointed as a judge or to have a death sentence commuted by an executive body. Furthermore, there is no determination of rights and obligations in a suit at law where the persons concerned are confronted with measures taken against them in their capacity as persons subordinated to a high degree of administrative control, such as disciplinary measures not amounting to penal sanctions being taken against a civil servant, a member of the armed forces, or a prisoner. This guarantee furthermore does not apply to extradition, expulsion and deportation procedures. Although there is no right of access to a court or tribunal as provided for by article 14, paragraph 1, second sentence, in these and similar cases, other procedural guarantees may still apply."

⁸ ECtHR, *Ferrazzini v. Italy*, Application no. 44759/98, 12 July 2001, para. 27.

determined that fair trial guarantees are applicable to all legal proceedings, including those of an administrative character.⁹

In this memorandum, the ICJ therefore addresses three fundamental elements of the administrative justice system: I) the State Council Bureau, which acts as the judicial council for the administrative justice system; II) certain elements of the careers of administrative judges, such as selection, appointment, tenure and discipline; and III) fair trial guarantees in administrative proceedings. The ICJ then formulates recommendations for reform that should, if adopted, significantly reinforce the independence and impartiality of the administrative courts, in particular the State Council, and thus contribute towards strengthening the rule of law and the public's confidence in the Lebanese judiciary.

The ICJ underlines that it focuses specifically on the areas that present challenges in the framework of the administrative courts system. Indeed, the provisions applicable to the ordinary court system – in particular under Legislative Decree No. 150 of 16 September 1983 on the organization of the judiciary (Decree-Law No. 150/83) – are generally also applicable to administrative courts, e.g. ordinary judges and administrative judges have the same status, the Judicial Inspectorate's competence extends to both the ordinary and the administrative courts,¹⁰ etc. With regard to these provisions, the ICJ has previously addressed where they lack conformity with international standards in a series of three memoranda pertaining to the High Judicial Council, the management of the careers of judges, and judicial accountability.¹¹ In large part, the recommendations made in these memoranda also apply to the administrative court system.

I. The State Council Bureau

Judicial Councils, or similar bodies, are designed and established to manage and regulate the careers of judges from training to appointment, promotion to discipline, and tenure to retirement. To do so properly and effectively, they must be truly independent from the executive and, importantly, they must be given sufficient authority and resources to perform their functions.

The State Council Bureau is the judicial council in charge of ensuring the proper administration of justice within the Lebanese administrative justice system. It is the equivalent of the ordinary judiciary's High Judicial Council.¹²

i. Composition

In order to safeguard the independence of both the judiciary as an institution and of judges individually, judicial councils must themselves be independent. In this regard, the composition of a judicial council "matters greatly to judicial independence as it is required to act in an objective, fair and independent manner when selecting judges".¹³

The State Council Bureau, is composed of¹⁴:

- 1- The President of the State Council, as President of the Bureau;

⁹ Inter-American Court of Human Rights, *Baena-Ricardo et al. v. Panama*, 2 February 2001, para. 124; See also Section A on the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa

¹⁰ Legislative Decree No. 150 of 16 September 1983 on the organisation of the judiciary [Decree-Law No. 150/83], article 97.

¹¹ See ICJ, *Lebanon: the ICJ calls for extensive reforms to strengthen judicial independence and accountability*, 28 February 2017, available at: <https://www.icj.org/lebanon-the-icj-calls-for-extensive-reforms-to-strengthen-judicial-independence-and-accountability/>.

¹² See Decree-Law No. 150/83, Chapter 1: The High Judicial Council, articles 2 and following.

¹³ Report of the Special Rapporteur on the Independence of Judges and Lawyers, UN Doc. A/HRC/26/32 (2014), para. 126.

¹⁴ Statute of the State Council, article 19(1).

- 2- The Government-Commissioner of the State Council, as Vice-President;
- 3- The President of the Judicial Inspectorate and the Presidents of the Chambers of the State Council¹⁵ (as members);
- 4- Three Presidents of the administrative courts of the highest rank.

Because the administrative courts have not actually been established to date, the State Council Bureau does not yet count among its members judges of the fourth category.¹⁶ Therefore, the composition of the State Council Bureau is not yet complete in accordance with the law.

The ICJ urges the Lebanese authorities to take the appropriate measures to implement the amendments to the Statute of the State Council made by Act No. 227 of 31 May 2000, according to which first instance administrative courts should be established in each *mohafaza* (province) of Lebanon. This would not only contribute to protecting the right to appeal (see section III on fair trial rights below), but also would ensure that the composition of the State Council Bureau is complete and in line with Lebanon's national legislation and contribute to the creation of a more effective administrative court system. To this effect, the ICJ recommends that the Minister of Justice adopt the necessary decision to establish these first instance administrative courts, in line with article 34 of the Statute of the State Council, as amended.

Furthermore, the ICJ observes with concern that, as opposed to the High Judicial Council of the ordinary justice system, where two members are elected, none of the members of the State Council Bureau are elected.

International standards recommend that a significant proportion of the membership of judicial councils be judges who are chosen by their peers. The Special Rapporteur on the independence of judges and lawyers has recommended that at least half of the members of a judicial council be judges who are elected by their peers.¹⁷ Similarly, the European Charter on the Statute for Judges states that, "[i]n respect of every decision affecting the selection, recruitment, appointment, career progress or termination of office of a judge, the statute envisages the intervention of an authority independent of the executive and legislative powers within which at least one half of those who sit are judges elected by their peers following methods guaranteeing the widest representation of the judiciary".¹⁸

The fact that no members of the State Council Bureau are elected does not allow for a representative judicial council. While first instance administrative courts do not yet exist, with a view to the eventual establishment of these courts, which is strongly recommended by the ICJ, it would be of high importance that the law be modified to provide that at least half of the members of the State Council Bureau be judges from all departments and levels of the administrative court system who are elected by their peers.

¹⁵ The State Council is divided in seven departments: 1) the Council of cases, and 2) six chambers: one administrative chamber and the remaining five judicial. The President of the administrative chamber is the President of the State Council; the Presidents of the five judicial chambers are members of the State Council Bureau. The Council of cases is composed of the President of the State Council, as president, of the presidents of the chambers, and of three advisors chosen by the President at the beginning of each judicial year. See article 34(3) of the Statute of the State Council.

¹⁶ See, Najib Farhat, "Assessment of the administrative situation of the State Shura Council in Lebanon", The Legal Agenda, 27 April 2015, available at (in Arabic): <http://www.legal-agenda.com/article.php?id=1082&lang=ar>.

¹⁷ See Report of the Special Rapporteur on the independence of judges and lawyers on her mission to Tunisia, UN Doc. A/HRC/29/26/Add.3 (2015), para. 96.

¹⁸ European Charter on the Statute for Judges, Strasbourg, 8-10 July 1998, Principle 1.3. See similarly Council of Europe Committee of Ministers Recommendation CM/Rec(2010)12, adopted 17 November 2010 [CoM Recommendation CM/Rec(2010)12], para. 46.

Moreover, all the members of the State Council Bureau are *ex officio* members, which means that the procedure for their appointment to their respective offices within the administrative judiciary is particularly important to assess their independence. While the President and Government-Commissioner of the State Council, as well as the President of the Judicial Inspectorate, are all appointed by Cabinet Decree upon the proposal of the Minister of Justice,¹⁹ the other judges are appointed by Cabinet Decree upon proposal of the Minister of Justice and approval of the State Council Bureau. (The method of appointment of administrative judges is examined in more detail in section II below.)

This means that the Minister of Justice has a direct influence on the selection of all the members of the State Council Bureau, most particularly in the case of the President and Government-Commissioner of the State Council and of the President of the Judicial Inspectorate, who hold the highest positions of the State Council Bureau. If the procedure of such appointments is not improved, not only will this continue to undermine the independence – real and perceived – of their offices, but also the ability of the State Council Bureau to function as an independent body.²⁰

The ICJ is of the view that all *ex officio* members should be appointed to the relevant office in an independent manner, through a transparent procedure that is based on objective criteria, including but not limited to skills, knowledge, experience and integrity. In addition, specific and concrete measures to ensure women's full and equal representation in the State Council Bureau and the judiciary as a whole should be adopted.²¹

ii. Mandate of the State Council Bureau

Article 19 of the Statute of the State Council provides that the State Council Bureau "ensures the proper functioning of the public service of administrative justice, its authority and its independence, and takes the appropriate decisions in this regard". For this purpose, the State Bureau Council is granted – in the framework of the administrative court system – the same powers as the High Judicial Council, as provided in Decree-Law No. 150/83 on the ordinary court system²², unless there are contradictory provisions in the Statute of the State Council. This includes powers regarding the selection and appointment, transfers, and discipline of administrative judges.

Judicial councils must be able to act independently and have the ability to ensure that the judiciary as a whole, as well as judges individually, are independent. The UN Human Rights Committee has recommended the establishment of "an independent body charged with the responsibility of appointing, promoting and disciplining judges at all levels".²³ Similarly, the European Charter on the Statute for Judges recommends "the intervention of an authority independent of the executive and legislative powers"

¹⁹Statute of the State Council, article 5; Decree-Law No. 150/83, article 100.

²⁰This is particularly important considering that in practice senior judicial positions in Lebanon are distributed in line with a religion-based power-sharing agreement. Thus, the President of the State Council Bureau is always Christian Maronite. This was addressed in the ICJ memorandum on the High Judicial Council. See ICJ, *The Lebanese High Judicial Council in Light of International Standards*, February 2017, available at: <https://www.icj.org/wp-content/uploads/2017/03/Lebanon-Memo-HJC-Advocacy-Analysis-Brief-2017-ENG.pdf>.

²¹See Convention on the Elimination of Discrimination against Women, adopted in 1979 by the UN General Assembly, article 7; Committee on the Elimination of Discrimination against Women, General Recommendation No. 23: Political and public life, UN Doc. HRI/GEN/1/Rev.9 (Vol. II) (1997), para. 15. See also Report of the Special Rapporteur on the independence of judges and lawyers on her mission to Tunisia, UN Doc. A/HRC/29/26/Add.3 (2015), para. 96.

²²Statute of the State Council, article 19(4).

²³Human Rights Committee, Concluding observations on Tajikistan, UN Doc. CCPR/CO/84/TJK (2005), para. 17.

in respect of "every decision affecting the selection, recruitment, appointment, career progress or termination of office of a judge."²⁴

The scope of mandate of the State Council Bureau is in line with the scope foreseen by these standards; however, the ICJ is concerned that the State Council Bureau lacks sufficient guarantees of independence in terms of its composition and of the method of appointment of its members, to meet that aspect of the standard(see section i above).

The ICJ is concerned about the significant involvement of the Minister of Justice in much of the procedures and criteria for selection and appointment of administrative judges. The executive's involvement also undermines these judges' security of tenure and casts doubt on the independence and transparency of disciplinary procedures. The ICJ's concerns in this regard are addressed in section II below on the careers of administrative judges.

It is vital that the State Council Bureau be reformed to become entirely independent and that it be granted full authority and competence in the management of all aspects of the careers of judges from the beginning of their career as a judge until its end.

Moreover, while the President of the State Council acts as supreme president in both the administrative and financial matters of administrative courts²⁵, and while the work of the first instance administrative courts (once established) is to be distributed between the chambers by decision of the President of the State Council after consultation with the State Council Bureau²⁶, the distribution of work within the State Council itself is subjected to the decision of the Minister of Justice (upon proposal of the State Council Bureau).²⁷ It is the view of the ICJ that the State Council Bureau should be granted oversight over all administrative aspects and function of administrative justice system, including the State Council.

In light of the above, the ICJ calls on the Lebanese authorities to fully implement the provisions of the Statute of the State Council including by establishing the first instance administrative courts in accordance with these provisions.

The ICJ further calls on the Lebanese authorities to amend the Statute of the State Council to:

- i. Ensure that the State Council Bureau consists of a majority of judges who are elected by their peers from the State Council and, once established, first instance administrative courts;**
- ii. Establish detailed and objective eligibility criteria for all elected and appointed members of the Bureau including, among other things, integrity, independence, impartiality and competence;**
- iii. Set out transparent procedures for the selection and appointment of senior judicial positions, in particular the President and the Government-Commissioner at the State Council and the President of the Judicial Inspectorate. While such appointments should in principle reflect the diversity of the Lebanese society as a whole, including its various religious groups, selection must be based on detailed, objective criteria, including, among others, skills, knowledge, experience and integrity;**

²⁴European Charter on the Statute for Judges, adopted by the participants at a multilateral meeting of the Council of Europe, Strasbourg, 8-10 July 1998, DAJ/DOC (98) 23, para. 1.3.

²⁵Statute of the State Council, article 3. See also article 47.

²⁶Statute of the State Council, article 34(2)(2).

²⁷Statute of the State Council, article 41.

- iv. **In this regard, ensure that the Minister of Justice has no direct or indirect role in the selection and the appointment of the members of the State Council Bureau;**
- v. **Provide for effective measures and safeguards to ensure that relevant procedures provide women with effective equal access to membership in the State Council Bureau, and to progress towards the equal representation of men and women in the composition of the State Council Bureau in actual practice;**
- vi. **Ensure that, once reformed, the State Council Bureau is exclusively in charge of all aspects relating to the administration and functioning of the administrative courts, as well as to judges' careers, while completely rescinding the Minister of Justice's role in these issues.**

II. The careers of administrative judges

The Human Rights Committee has stressed that article 14 of the ICCPR requires States to take specific measures guaranteeing the independence of the judiciary "through the constitution or adoption of laws establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them".²⁸ Indeed, judges must be able to make their decisions in an entirely independent manner, free from the interference or influence of political authorities or even from other judges. To ensure that judges are able to work in an environment that allows them to make their decisions freely, and to reduce to the minimum any chance of them being influenced by other factors, guarantees must be made concerning their status and career, particularly with regard to their selection and appointment, to security of tenure, and to disciplinary liability.

Article 4 of the Statute of the State Council provides that administrative judges are independent in the exercise of their judicial duties and that any transfer, detachment or any other measure that would infringe upon their statutory situation shall only be made within the framework established by this law. However, several provisions put into question administrative judges' independence, either in reality or in appearance.

i. Selection and appointment of administrative judges

a. *Selection and appointment procedure*

The procedure for selection of Lebanese administrative judges is quite similar to that of the judges of the ordinary judiciary. It begins with the determination, by the Minister of Justice and after consultation with the State Council Bureau, of the number of trainee judges that should be appointed, and the Minister of Justice's request that the State Council Bureau organize a competition to that effect. The State Council Bureau thus organizes the competition for entry to the Institute of Judicial Studies, determines the subjects of the competition and the grades for admission, and appoints the examining committee from among judges selected for this purpose.²⁹ Eligibility is based on general requirements, such as nationality, age, and legal qualifications (see below on criteria for selection and appointment).

Candidates who pass the examination are admitted to the section of Public Law of the IJS, which provides training on the management of judicial activity within the administrative courts and the State Council. Generally, the provisions applicable to judicial trainee judges are equally applicable to administrative trainee judges; however, in all matters related to administrative trainee judges, the State Council

²⁸Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to fair trial, UN Doc. CCPR/C/GC/32, 23 August 2007 [Human Rights Committee, General Comment No. 32], para. 19.

²⁹Statute of the State Council, article 9. See also article 76 of Decree-Law No. 150/83.

Bureau acts as judicial council in lieu of the High Judicial Council.³⁰ The trainee judges are assigned to one of the chambers of the courts or the State Council in addition to being assigned theoretical and applied work.

Furthermore, the procedure for appointment mirrors that of the appointment of judges to the ordinary judiciary, with the State Council Bureau playing the role of judicial council. Under the provisions of the Statute of the State Council, appointment to the tenured administrative judiciary should be done as follows:

- Trainee judges are appointed to the administrative courts as tenured judges of the lowest grade by Cabinet Decree upon proposal of the Minister of Justice.³¹ This appointment does not appear to be subject to the approval of the State Council Bureau;
- After at least five years, these judges may be transferred to the State Council as assistant-advisors by decision of the Minister of Justice and after the approval of the State Council Bureau;³²
- Judges from the ordinary court system of the fourth grade or above – and lawyers who have been registered for at least five years – can be appointed as assistant-advisors or advisors in the administrative courts, if they have not exceeded the age of 40 years;³³
- Judges from the ordinary court system of the tenth grade or above can also be appointed as President of a State Council Chamber or of an administrative court by Cabinet Decree upon the proposal of the Minister of Justice and the approval of the State Council Bureau;³⁴
- State Council advisors are appointed by Cabinet Decree upon proposal of the Minister of Justice after approval of the State Council Bureau from among the advisors or assistant-advisors of the administrative courts of the seventh grade or above. However they may also be chosen from among certain other professional categories, such as ordinary judges of the seventh grade or above, persons who have Lebanese law degree and have worked in the public administration or public institutions for at least five years, holders of a doctorate in law who have taught for at least ten years in law faculties, or lawyers who have been registered for at least 15 years and who are not more than 48 years of age.³⁵
- Presidents of the Chambers of the State Council and of the administrative courts are appointed from among the advisors who are of the tenth grade or higher, and by Cabinet Decree upon the proposal of the Minister of Justice and after approval of the State Council Bureau.³⁶
- The President and Government-Commissioner – i.e. the Office of the Prosecutor – of the State Council are both appointed by Cabinet Decree upon the proposal of the Minister of Justice. They are chosen from among the chamber presidents of the fourth highest grades or above, or from among the advisors ranked in the first grade. They may also be appointed, in the same manner, from among ordinary judges from the 12th grade or above.³⁷

The procedure governing the selection and appointment of judges must ensure the effective independence of the judiciary, both in appearance and in reality. In this regard, the UN Human Rights Committee has criticized the involvement of the executive in the appointment of judges and has recommended the establishment of an independent body to safeguard appointment, as well as promotion and regulation

³⁰ Decree-Law No. 150/83, article 76.

³¹ Statute of the State Council, article 8.

³² Statute of the State Council, article 8.

³³ Statute of the State Council, article 8.

³⁴ Statute of the State Council, article 9.

³⁵ Statute of the State Council, article 7.

³⁶ Statute of the State Council, article 6.

³⁷ Statute of the State Council, article 5.

of the judiciary.³⁸ International standards also recommend that the selection and appointment of judges be done through procedures that “safeguard against judicial appointments for improper motives”.³⁹ The African Commission on Human and Peoples’ Rights (ACHPR) Principles and Guidelines similarly provide that the process of appointment “shall be transparent and accountable” and that the method of selection “shall safeguard the independence and impartiality of the judiciary”.⁴⁰

The ICJ is concerned that the selection and appointment process is not based on objective, detailed and transparent criteria, and allows for significant influence by the executive, in particular by the Minister of Justice. This influence is likely to be manifested at several levels:

1. The Minister of Justice has the power to determine how many new trainee judges should be appointed and, in all cases, administrative judges are appointed through Decree of the Council of Ministers, upon proposal of the Minister of Justice. In order to enhance the independence of the administrative judiciary, the determination of the number of new trainee judges needed should be made by the State Council Bureau, which should be a better position to assess the needs of the administrative courts.⁴¹
2. It is essential that the exclusive role of the Minister of Justice in proposing candidates for appointment be rescinded.
3. While the State Council Bureau must approve most appointments, the initial appointment of trainee judges into the tenured judiciary and the appointment of the President and Government-Commissioner of the State Council are not subjected to such an approval. In practice, trainee judges cannot as of yet be appointed to the first instance administrative courts as they have not yet been established, but once these courts are established, the Minister of Justice will have direct influence over the entire administrative justice system by exclusively appointing administrative judges of the lowest level as well as those of the highest level.

The Lebanese authorities should ensure that the Minister of Justice is divested of any role in the selection and the appointment of administrative judges, including the Minister’s competencies to evaluate the need to recruit new administrative judges and to propose candidates for appointment. To this end, and with view to upholding the independence of the judiciary, they must also reform the legal framework relating to the State Council Bureau to ensure that this Council is independent from the executive, including by ensuring that the Minister of Justice is divested of any role in appointing its members, amending its composition to ensure that the at least half of its members are judges elected by their peers, and ensuring that it is pluralistic and gender representative.

Finally, if despite the above recommendations the Council of Ministers’ prerogative to formally appoint judges by Decree were to remain, the Lebanese authorities should ensure it is not politicized or used to undermine the independence of the judiciary. This is especially relevant in Lebanon, where the executive is known to exercise its influence over the judiciary at many levels, in particular judicial appointments.⁴² Where the executive or legislative branches formally appoint judges

³⁸ Human Rights Committee, Concluding observations on Honduras, UN Doc. CCPR/C/HND/CO/1 (2006), para. 16.

³⁹ UN Basic Principles on the Independence of the Judiciary, Principle 10.

⁴⁰ African Commission on Human and Peoples’ Rights, Principles and Guidelines on the right to a fair trial and legal assistance in Africa, Principle A.4(h).

⁴¹ Currently, while the Annex to the Statute of the State Council provides that there should be 99 administrative judges, including those of the first administrative courts (26), there are only 47 judges at the State Council. This means that even at the level of the Shura Council, 26 posts are still vacant.

⁴² With regard to the State Council more specifically, it is known that the Government amended article 5 of the Statute of the State Council in 2000, in order to be able to appoint a State Council President from among the ordinary court system. Before this amendment, which

following their selection by an independent body, the UN Special Rapporteur on the independence of judges and lawyers has explained that the recommendations made by the independent body should:

only be rejected in exceptional cases and on the basis of well-established criteria that have been made public in advance. For such cases, there should be a specific procedure by which the executive body is required to substantiate in a written manner for which reasons it has not followed the recommendation of the [...] independent body for the appointment of a proposed candidate. Furthermore, such written substantiation should be made accessible to the public. Such a procedure would help enhance transparency and accountability of selection and appointment.⁴³

Therefore, a provision should be made according to which appointment decisions made by the State Council Bureau could only be rejected by the Council of Ministers in exceptional cases, on the basis of well-established and transparent criteria, and in accordance with a specific procedure, including the necessity of substantiating that choice in writing and making it available to the public.

b. Criteria for selection and appointment

Article 9 of the Statute of the State Council provides that, to be eligible to undertake the examination for admission to the Institute of Judicial Studies as a trainee judge in the Public Law section, candidates must:

- 1- have had Lebanese nationality for at least ten years;
- 2- be at least 21 years of age but not over 31;
- 3- enjoy all their civil rights and have no conviction for a felony or attempt at a felony of any kind, or a misdemeanour as defined in the Civil Servants Act;
- 4- be free from diseases or disabilities that would prevent them from exercising their duties, [...] and
- 5- hold a Lebanese law degree.

However, candidates may be admitted to the Institute without having to go through a competition if they hold a doctorate in law, after the approval of the State Council Bureau.⁴⁴

No other criteria are provided for the appointment of trainee judges into the tenured judiciary.

Article 10 of the UN Basic Principles on the Independence of the Judiciary provide that “[p]ersons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law”, that “any method of judicial selection shall safeguard against judicial appointments for improper motives”, and that “in the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.” The Universal Charter of the Judge states that “[t]he selection and each appointment of a judge must be carried out according to objective and transparent criteria based on proper professional qualification”. Articles 2 and 25 of the International Covenant on Civil and Political Rights (ICCPR) further prohibit discrimination and guarantee equal access to public office (which includes judicial appointments) without

resulted from an agreement between political parties and communities, the President of the State Council had to be appointed from among the Presidents of the State Council Chambers. See Euro-Mediterranean Human Rights Network, *Lebanon: The Independence and Impartiality of the Judiciary*, 2010, p. 32.

⁴³ Report of the Special Rapporteur on the independence of judges and lawyers, UN Doc. A/HRC/11/41, para. 33.

⁴⁴ Statute of the State Council, article 9.

discrimination on grounds "such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

As the ICJ made clear in its memorandum on the management of the careers of judges,⁴⁵ detailed and objective criteria should be set out in the law at all levels of the selection and appointment process. In particular, the criteria for acceptance to undergo the IJS entrance examination, for the decision of the State Council Bureau to appoint a trainee judge as a tenured judge, and to appoint judges to a position within the judiciary, should all be fully and clearly prescribed by the law, based solely on merit and to the exclusion of any political considerations. The criteria should focus principally on qualifications and training in law, experience, skills and integrity, and ensure that the method of selection safeguards against improper motives in judicial appointments.

As was discussed in more detail in the memorandum on management of the careers of judges, the appointment of senior judicial positions in Lebanon is subjected, in practice, to a religion-based power-sharing agreement. The ICJ is of the view that it is important for the judiciary, including administrative judges, and the State Council, to be representative of the Lebanese society as a whole. To achieve this objective, the Lebanese authorities should provide for a comprehensive general anti-discrimination clause, covering at minimum the same scope of grounds covered by the non-exhaustive list in articles 2 and 25 of the ICCPR, and should take effective measures to ensure that people belonging to minorities, including religious minorities, enjoy equal access to and participation in the judiciary, including the administrative judiciary. However, the ICJ believes that the selection and the appointment of judges, including administrative judges, as well as their representation in the State Council, should not be uniquely and exclusively based on whether the concerned judges belong to a specific religious group. Doing so would be discriminatory against judges who are adherents of other religions or who do not hold a religious belief. Rather, judicial selection and appointment should be based on objective criteria provided for by the law and complied with in practice.

Effective measures and safeguards should be taken to ensure that relevant procedures provide women with effective equal access to appointment as administrative judges, and to progress towards the equal representation of men and women in the composition of the administrative judiciary in Lebanon in actual practice. The Committee for the Elimination of Discrimination against Women, mandated by the Convention on the Elimination of all forms of Discrimination against Women, which Lebanon ratified in 1996, with interpreting and applying its provisions, emphasized that article 7 of the Convention requires States not only to remove any legal barriers, but also to take additional measures to ensure that women enjoy equal opportunities to participate in the judiciary in practice. These may include temporary special measures such as "recruiting, financially assisting and training women candidates, amending electoral procedures, developing campaigns directed at equal participation, setting numerical goals and quotas and targeting women for appointment to public positions such as the judiciary".⁴⁶ Moreover, the UN Special Rapporteur on the independence of judges and lawyers stated: "since a primary function of the judiciary is to promote equality and fairness, the composition of courts and other judicial offices should reflect the State's commitment to equality."⁴⁷

⁴⁵ See ICJ, *The Career of Judges in Lebanon in Light of International standards: Judicial selection, appointment, promotion and security of tenure*, 28 February 2017, available at: <https://www.icj.org/wp-content/uploads/2017/03/Lebanon-Memo-judges-Advocacy-Analysis-Brief-2017-ENG.pdf>.

⁴⁶ Committee on the Elimination of Discrimination against Women, General Recommendation No. 23: Political and public life, UN Doc. HRI/GEN/1/Rev.9 (Vol. II) (1997), para. 15.

⁴⁷ Interim Report of the Special Rapporteur on the independence of judges and lawyers, UN Doc. A/66/289 (2011), para. 26. See also ICJ, *Women and the World's Judiciaries: Identifying Key Challenges and Opportunities* (2014).

ii. Irremovability and security of tenure

Administrative judges, who for the most part have the same status as the judges of the ordinary court system, are subjected to the provisions of Decree-Law No. 112 of 12 June 1959 (the Law on civil servants), unless the provisions of the Statute of the State Council state otherwise.⁴⁸ Thus, similarly to judicial judges, administrative judges are in principle appointed for life until retirement age of 68.⁴⁹ However, certain provisions of the Statute of the State Council are particularly worrying, because they appear undermine administrative judges' security of tenure or irremovability, or both.

International standards generally recommend tenure for life as a safeguard for judicial independence, subject to judges' ability to properly discharge their functions. In any event, judges, whether appointed or elected, must have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.⁵⁰ The Special Rapporteur on the independence of judges and lawyers has further explained that tenure must be guaranteed through irremovability for the period of time the judge has been appointed, stating that the irremovability of judges is "one of the main pillars guaranteeing the independence of the judiciary".⁵¹

To preserve judicial independence and the principles of security of tenure or irremovability, judges should be protected from being transferred, re-assigned or seconded in an improper or arbitrary manner or for improper reasons. According to the Special Rapporteur on the independence of judges and lawyers, "the assignment of judges to particular court locations, and their transfer to others, should equally be determined by objective criteria". In principle, no transfer, re-assignment or secondment of a judge should be permitted without his or her consent, and any relevant decisions should be taken only by judicial authorities or the independent judicial council (in order to avoid their abuse as a form of either punishment or reward by the executive authorities).⁵²

While the Statute of the State Council provides that detachments of administrative judges to a ministry, administration or public body can be ordered by Cabinet Decree upon proposal of the Minister of Justice and of the other relevant Ministry or relevant body, after approval of the State Council Bureau, it also provides that, under article 7, State Council or administrative judges can only be detached to a ministry, administration or public body with their consent. At this juncture, the requirement for judges' consent, if respected in practice, should help to ensure that they are protected from abusive transfers, protecting their independence.

However, in accordance with article 18 of the Statute of the State Council, as of a year after appointment, members of the State Council can be transferred to the public administration upon proposal of the Minister of Justice and of the other relevant Minister, and upon approval of the State Council Bureau. This transfer is not subject to the consent of the judge in question. This provision undermines judges' security of tenure and runs the risk of affecting their independence. Not only should such a transfer be subjected to the judge's consent, but the Minister of Justice's role in the matter should be entirely rescinded.

⁴⁸ Statute of the State Council, article 7.

⁴⁹ Decree-Law No. 2102 of 25 June 1979, article 1.

⁵⁰ UN Basic Principles on the Independence of the Judiciary, Principle 12; Recommendation No. R(94)12 of the Committee of Ministers of the Council of Europe to member states on the independence, efficiency and role of judges [CoM Rec No. R(94)12], Principle I(3); and African Commission on Human and Peoples' Rights, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Principle A.4(I).

⁵¹ Report of the Special Rapporteur on the independence of judges and lawyers (2009), UN Doc. A/HRC/11/41, para. 57.

⁵² See for instance Measures for the effective implementation of the Bangalore Principles of Judicial Conduct ["Bangalore Implementation Measures"] (Judicial Group on Strengthening Judicial Integrity, 2010), articles 4.1, 12.6 and 13.5.

In addition, under article 16 of the Statute of the State Council, advisors and assistant-advisors can be seconded to various functions of the ministries, administration departments, public institutions or municipalities. These secondments are ordered by Cabinet Decrees, upon proposal of the Minister of Justice and the approval of the President of the State Council. The judge who is thus seconded keeps his title and position in the administrative judiciary, and no other judge is appointed in his place. The judge continues to receive the salary for his position within the State Council, and also takes monetary compensation for his new tasks.⁵³

Allowing the Minister of Justice to propose that an administrative judge be seconded to another function, which would allow this judge to receive monetary compensation in addition to retaining his or her initial salary, gives the executive strong leverage, or at least the appearance of leverage, to influence certain judges individually. The Singhvi Declaration states that the assignment of a judge to a post "shall be carried out by the judiciary or by a superior council of the judiciary where such bodies exist".⁵⁴ This contributes to protection against undue interference such as using transfers as a means of exerting pressure on judges, which can threaten judicial autonomy and independence in decision-making. Therefore, the Minister of Justice should be divested of his role in this regard. Moreover, such a decision should be made by the State Council Bureau as a whole, and not only by the President of the State Council.

The UN Basic Principles on the Independence of the Judiciary states that, "Promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience".⁵⁵ The ICJ is of the view that such clear and objective criteria should also be established for the secondment of judges to further guarantee that such secondments are not used for improper motives.

iii. Disciplinary infractions and proceedings

The disciplinary regime for Lebanese administrative judges contains some differences from that applicable to the judges of the ordinary judiciary.⁵⁶ Upon being granted tenure, administrative judges and other judges appointed to the State Council, must swear the following oath: "I swear to God that I will exercise my duties in all sincerity and honesty, that I will maintain the confidentiality of deliberations with absolute diligence, and that I will conduct myself as an honest and honourable judge in the exercise of my duties."⁵⁷ In addition, under article 22 of the Statute of the State Council, "Any breach of professional duties and any act that violates honour, dignity or propriety, is a disciplinary fault that is punishable before the Disciplinary Board provided for in article 24."

Disciplinary proceedings begin with the Minister of Justice, who may request the President of the State Council to conduct an investigation with regard to any issue that may seem to require disciplinary action. The investigation is conducted by a member of the State Council of a higher or equivalent rank as the judge who is the subject of an investigation, as mandated by the President of the State Council. The outcome of the investigation is then referred to the Minister of Justice through the

⁵³ Statute of the State Council, article 16.

⁵⁴ Singhvi Declaration, article 13.

⁵⁵ Basic Principles on the Independence of Judges and Lawyers, article 13.

⁵⁶ When it comes to the judicial ethics framework, the "Basic Principles of Judicial Ethics", adopted by the Minister of Justice in 2005 with the approval of both the High Judicial Council and the State Council Bureau, apply to all Lebanese judges, be it from the ordinary court system or the administrative jurisdiction. The ICJ addresses this subject in more detail in its memorandum relating to judicial accountability in Lebanon. See ICJ, *Judicial accountability in Lebanon: international standards on the ethics and discipline of judges*, February 2017, available at: <https://www.icj.org/wp-content/uploads/2017/03/Lebanon-Memo-accountability-Advocacy-Analysis-Brief-2017-ENG.pdf>.

⁵⁷ Statute of the State Council, article 12.

President of the State Council Bureau. The Minister of Justice then refers the case to the Disciplinary Board if this seems justified by the results of the investigation.⁵⁸

The Disciplinary Board is composed of five members:

- the President of the State Council;
- the Government-Commissioner of the State Council;
- the two Presidents of the State Council Chambers who are of the highest grade;
- the President of the administrative courts of the highest grade.⁵⁹

The President of the Disciplinary Board appoints a rapporteur from among its members. The rapporteur undertakes the necessary investigations, listens to the concerned judge and to the complainant where necessary, and takes witness statements given under oath. He or she then reports without delay to the Disciplinary Board.⁶⁰

The President of the Disciplinary Board immediately calls upon the concerned judge to acquaint him or her with the file and the report of the rapporteur, and for him or her to appear before the Disciplinary Board at a fixed time. The hearing takes place behind closed doors, where the rapporteur's report is read out and the defendant is asked to provide his or her defence. The defendant is entitled to seek the assistance of a lawyer or of one of his colleagues. If the defendant is absent, the Disciplinary Board considers the issue in light of all the documents at its disposal. The Disciplinary Board issues its decision on the same day or adjourns to the next day at the latest and must justify its decision.

The decision of the Disciplinary Board is not subject to any method of review, including through cassation (appeal on questions of law), and takes effect automatically once it is communicated to the defendant.⁶¹

According to article 27 of Decree No. 10434, the possible disciplinary sanctions are the following:

- 1- Reproach;
- 2- Suspension without pay, for a period not exceeding one year;
- 3- Delay in promotion, for a period not exceeding two years;
- 4- Demotion in rank;
- 5- Demotion in category;
- 6- Dismissal; or
- 7- Removal from office with deprivation of compensation or of retirement pension.

While international standards state that violations of established standards of judicial conduct or ethics may trigger disciplinary or other forms of liability, it is important that such accountability mechanisms be established in a way that fully protects judges' independence, so as to not be used as a means of interfering with their decision-making. The Special Rapporteur on the independence of judges and lawyers made clear that, "accountability mechanisms should follow clear procedures and objective criteria provided for by law and established standards of professional conduct".⁶² In

⁵⁸Statute of the State Council, article 23.

⁵⁹Statute of the State Council, article 24. Under article 51 of the Statute of the State Council, in the case of the judicial assistants attached to the administrative courts, the Disciplinary Board is composed of three administrative judges, who are appointed for a period of three years, renewable once, by decision of the Minister of Justice after consultation with the State Council Bureau. A judicial inspector, mandated to do so by the President of the Judicial Inspectorate, performs the functions of Government-Commissioner. The provisions of articles 25 to 27 of the Statute of the State Council still apply.

⁶⁰Statute of the State Council, article 25.

⁶¹Statute of the State Council, article 26.

⁶² UN Special Rapporteur on the independence of judges and lawyers, Report on judicial accountability, (2014) UN Doc. A/HRC/26/32, para. 78.

addition, international standards specify 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.⁶³The ICJ also recalls that 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".⁶⁴The Implementation Measures for the Bangalore Principles of Judicial Conduct recommend that:

The power to discipline a judge should be vested in an authority or tribunal which is independent of the legislature and executive, and which is composed of serving or retired judges but which may include in its membership persons other than judges, provided that such other persons are not members of the legislature or the executive.⁶⁵

The legal regime regulating disciplinary infractions and mechanisms in the administrative court system in Lebanon contains certain flaws that may have the potential of deeply undermining judicial independence and due process guarantees.

Disciplinary liability should be based upon clearly established rules of conduct.⁶⁶In Any such standards of conduct must be sufficiently detailed to ensure that judges have notice of what kinds of conduct are prohibited and to prevent issues of arbitrary interpretation.

It is therefore of serious concern that the disciplinary liability of administrative judges is based on the provisions of articles 12 (relating to the oath) and 22 (relating to breach of professional duties) of the Statute of the State Council, which use such vague and imprecise terms as "honour", "dignity", and "propriety, as well as "breach of professional duties". None of these terms allows judges sufficiently precise awareness of the specific conduct or behaviors that may engage their responsibility and liability.⁶⁷This can result in arbitrary punishment of judges and the threat of discretionary action as a means of unduly influencing judges. Article 22, in particular, 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.

With regard to the disciplinary procedure, the ICJ is concerned that: 1) giving the Minister of Justice the power to decide which cases are referred for investigation and hearing (?), and 2) the procedure lacks sufficient guarantees to ensure fairness.

⁶³See for example UN Basic Principles on the Independence of the Judiciary, articles 17 to 20; Human Rights Committee, General Comment no 32, paras 19 and 20. For more detail see ICJ, Practitioners' Guide no. 13 : Judicial Accountability (2016), pp 33 to 81.

⁶⁴ 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.

⁶⁵Bangalore Implementation Measures, para 15.4.

⁶⁶ UN Basic Principles, Principle 19; Bangalore Implementation Measures, paras 15.1 and 15.5. See also CCJE, Magna Carta of Judges (Fundamental Principles), para. 19.

⁶⁷ In comparison, article 83 of Decree-Law No. 150/83 on the organisation of the judiciary provides for certain non-exhaustive examples of what could be considered a "breach of professional duty", such as unjustified absence, delay in the adjudication of cases, discrimination, etc. However, even in the case of this provision, this is not detailed and comprehensive enough to effectively guide judges and help them avoid the types of conduct that may be of a nature to engage their liability. See on this issue, ICJ, *Judicial accountability in Lebanon: international standards on the ethics and discipline of judges*, February 2017, available at: <https://www.icj.org/wp-content/uploads/2017/03/Lebanon-Memo-accountability-Advocacy-Analysis-Brief-2017-ENG.pdf>.

Regarding the role of the Minister of Justice, the ICJ is concerned about the risk or potential this creates for undue influence. Indeed, it is the Minister of Justice who requests the Council's President to investigate allegations of misconduct. The investigation's report is then referred to the Minister of Justice. The Minister refers the concerned judge to the Disciplinary Board if he/she finds anything in the report that justifies such referral. Giving the Minister of Justice this competence creates an important risk that it will be used, or could reasonably be perceived to be potentially used, as a tool of pressure against administrative judges. With a view to enhancing judicial independence, the Minister of Justice's role in these disciplinary matters should be entirely rescinded.

Regarding insufficient guarantees of fairness, the ICJ is concerned that the law does not sufficiently guarantee the defendant judge's right to adequate time and facilities. While the law provides that the Rapporteur is to listen to the concerned judge in the course of his investigations, that the Rapporteur files his report with the Disciplinary Board, and that the judge is acquainted with his or her file and the report in question before the hearing, it does not explicitly provide that the defendant judge should be given adequate time to prepare his or her defence. As it currently stands, the hearing may be held at any time once the defendant judge is given access to his or her file, and the Disciplinary Board must issue its decision on the same day as the hearing or on the following day, which in many cases may not guarantee the judge sufficient time to prepare his or her defence (and may not leave the Disciplinary Board enough time to properly assess the defendant's arguments). The law should specifically require that enough time be given to the defendant to prepare his or her defence, and that the Disciplinary Board should be given a reasonable amount of time to fully assess the judge's arguments. There should be flexibility in practice so that the length of time can be assessed and adjusted in relation to the particular case, in accordance with its complexity and the gravity of possible consequences. The law should also explicitly state that the defendant is to be given access to all relevant information within the possession of investigators and the Board(?), including potential exculpatory material, whether or not the Board intends to use it in its deliberations.

Furthermore, the decisions of the Disciplinary Board are not subject to any kind of review. This is inconsistent with the right to appeal all disciplinary decisions and sanctions before a court or other independent and impartial review body, as provided for by international standards.⁶⁸ This is all the more concerning when taking into consideration that article 27 of the Statute of the State Council enumerates the possible sanctions without specifying in which cases each sanction could be applicable or explicitly stating that the sanction imposed must be proportionate to the misconduct committed. International standards provide that disciplinary decisions issued against judges must be based on established standards of judicial conduct and that sanctions must be proportionate.⁶⁹

Finally, with regard to the available sanctions, the law must also ensure that the sanction of dismissal may only be pronounced on "serious grounds of misconduct or incompetence, in accordance with fair procedures ensuring objectivity and impartiality set out in the constitution or the law".⁷⁰ 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.

⁶⁸ Un Basic Principles on the Independence of the Judiciary, Principle 20; and ICJ, Practitioners Guide No. 13 on Judicial Accountability, June 2016 [ICJ, Practitioners Guide No. 13], pp. 67 to 69, available at: <https://www.icj.org/wp-content/uploads/2016/06/Universal-PG-13-Judicial-Accountability-Publications-Reports-Practitioners-Guide-2016-ENG.pdf>.

⁶⁹ ICJ, Practitioners Guide No. 13, pp. 8-14, 26.

⁷⁰ Human Rights Committee, General Comment No. 32, para. 20. See also, ICJ, Practitioners Guide No. 13, pp. 22 to 27.

In light of the above, the ICJ calls on the Lebanese authorities to amend the Statute of the State Council to:

- i. With regard to the selection and appointment of administrative judges:**
 - a. Ensure that the State Council Bureau become exclusively competent with regard to the selection, appointment and other aspects of the careers of administrative judges and, in this regard:**
 - **Divest the Minister of Justice of any role in the selection and the appointment of judges, including with regards to proposing candidates either as tenured judges or as trainee judges;**
 - **Divest the executive of its exclusive competence to appoint the President and Government-Commissioner of the State Council and transfer this competence to the State Council Bureau;**
 - **Ensure that the executive's prerogative to formally appoint judges by decree is not politicized or used to undermine the independence of the judiciary and does not involve undue delays;**
 - b. Set forth, consistent with international standards, clear and objective criteria at all levels of the selection and appointment process. Such criteria should include, among others, qualifications and training in law, experience, skills and integrity;**
 - c. Ensure that the selection of judges precludes direct or indirect discrimination on prohibited grounds, including by providing for a comprehensive general anti-discrimination clause, covering at least all the grounds of prohibited discrimination covered by the ICCPR;**
 - d. While such appointments should reflect the diversity of the Lebanese society as a whole, including its various religious groups, selection of administrative judges must be based on detailed, objective criteria, including, among others, skills, knowledge, experience and integrity;**
 - e. Effective measures and safeguards should be taken to ensure that relevant procedures provide women with effective equal access to appointment as administrative judges, and to progress towards the equal representation of men and women in the composition of the administrative judiciary in Lebanon in actual practice.**
- ii. With regard to irremovability and security of tenure:**
 - a. Amend the Statute of the State Council with a view to ensuring that transfers, assignments or secondments of judges do not compromise judges' individual independence, including by:**
 - **Ensuring that all transfer, assignment or secondment decisions are taken by the State Council Bureau and that the consent of the concerned judge, which should not be unreasonably withheld, is sought;**
 - **Preventing the use of secondments as a reward for judges, including by providing for clear and objective criteria for judges to be seconded, such as integrity, independence, professional competence, experience, humanity and commitment to uphold the rule of law;**
 - **Ensuring that the conditions for the transfer, assignment or secondment of judges are clearly defined by law and that the entire process guarantees judges' individual independence.**
- iii. With regard to disciplinary proceedings:**

- a. **Ensure that the law clearly and precisely defines the forms of misconduct that may engage a judge's disciplinary liability and, in this regard:**
 - **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;**
 - **Ensure that the scope of grounds for disciplinary action are not overbroad so as to be open to wrongful interference with the independence of individual judges;**
 - **Ensure that disciplinary sanctions are clearly established and appropriate to the character and gravity of the offence committed;**
 - **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;**
- b. **Ensure that the disciplinary procedure does not undermine the independence and impartiality of the judiciary, and to this end, rescind the powers of the Ministry of Justice in relation to the disciplinary procedure, including the decision-making power to initiate disciplinary investigations and refer matters to the Disciplinary Council;**
- c. **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:**
 - **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;**
 - **ensuring the right of the judge to appeal against any disciplinary decision or sanction issued against him or her to an independent tribunal.**

III. The right to a fair trial before an independent and impartial tribunal in administrative proceedings

The ICJ observes that proceedings within the administrative courts in Lebanon do not adequately guarantee respect for the full range of rights to fair hearing and effective remedy. Particular issues arise in relation to the right to be heard by an impartial tribunal, the right to an oral hearing, the right to appeal first instance administrative decisions, and the effective execution of judgments.

i. Right to an impartial hearing

Impartiality refers to the objectivity of a judge when evaluating the merits of the facts and arguments of the case before him. As was addressed above, where the judge individually is insufficiently independent due to factors affecting his or her career, such as appointment, tenure, or discipline, he or she is less likely to make an impartial decision where the state is involved as a party to the proceedings, and even if the judge has in fact acted impartially, lack of such safeguards his or her independence may create a reasonable apprehension of bias on the part of a losing party. However, other factors – not related to the career of the judge – can also contribute to undermining his or her impartiality, or the appearance of it.

The ICJ observes that two aspects of Lebanon's administrative proceedings through the State Council may give rise to concerns about a lack of impartiality, real or perceived, of the administrative judges in particular cases. These are: the double role of the State Council as both an advisory and jurisdictional body, and the role of the "rapporteur" in charge of the investigations during administrative proceedings.

a. Administrative judges as advisors and adjudicators

The State Council has both an advisory and a jurisdictional role. On the one hand, it presents its opinions on some administrative decisions to the executive⁷¹ and, on the other hand, it adjudicates administrative disputes between the State, legal persons of public law, and individuals.⁷²

Under article 59 of the Statute of the State Council, the Minister of Justice can request from the President of the State Council that he appoint any member of the Council to assist in the preparation of one of the drafts or projects set out in articles 56 and 57 of the Statute. These include draft legislative decrees, draft regulations, international treaties, and any other legal issue deemed important by the Council of Ministers.

This advisory or participatory role presents difficulties where the State Council may also be subsequently called upon to act as a *jurisdictional* body in a related matter, where its independence and impartiality must be guaranteed. Like other tribunals, administrative courts must be independent and impartial, and must be *perceived* as such. The ECtHR, in particular, has developed a jurisprudence in this regard as a result of the dual role State Councils generally play as both policy advisors to their governments and judges of the legality of their governments' administrative acts. In a case involving Luxembourg, the ECtHR ruled that the fact "that four of [the Judicial Committee's] five members had to rule on the lawfulness of a regulation which they had previously scrutinized in their advisory capacity" constituted legitimate grounds for the claimant to fear that the members of the Judicial Committee of the *Conseil d'État* had not been impartial. In the words of the ECtHR: "That doubt itself, however slight its justification, is sufficient to vitiate the impartiality of the tribunal in question [...]"⁷³.

Nowhere in the Statute on the Council is it provided that the judge who has been mandated to advise the government may not subsequently adjudicate in a case involving the decision, regulation, law or act that he or she previously scrutinized. With a view to ensuring the impartiality, both real and perceived, of the administrative judges of the State Council in all cases, the ICJ therefore recommends that a provision be adopted to explicitly stipulate that a judge who has advised the government on a draft law, regulation, decision, or any other act of public administration, may not act in a jurisdictional capacity in proceedings where this act may be relevant.

⁷¹ Statute of the State Council, articles 56-57.

⁷² Statute of the State Council, article 2. Jurisdictionally, the State Council (and the administrative courts) is competent in administrative matters. It is up to the State Council to abrogate a contested administrative act that suffers from one of the following defects:

- 1- If it was issued by an authority that is not valid;
- 2- If it was adopted in contravention of fundamental procedures as provided in legislation and regulations;
- 3- If it was adopted in contravention of legislation, regulations, or a court case;
- 4- If it was adopted for an objective other than that which the law authorizes the competent authority the right to adopt such an act (article 108).

Moreover, the State Council can adjudicate where voters and individuals who presented their candidacy legitimately object to the validity elections of administrative councils, such as municipal councils, and elective bodies (article 109). The State Council is also the competent body to hear disciplinary cases against public officials (article 110).

⁷³ ECtHR, *Procola v. Luxembourg*, Application no. 14570/89, 28 September 1995, paras 44-45.

b. The rapporteur in administrative proceedings as an adjudicator in the case

Another issue of concern can arise from the fact that the “rapporteur”, an administrative judge mandated to conduct the investigations during administrative proceedings, is also one of the adjudicators in the case he has investigated.

Once administrative proceedings are initiated,⁷⁴ a “rapporteur” is appointed by the President of the Chamber before which the case is under consideration.⁷⁵

The rapporteur is in charge of conducting the investigations he or she deems necessary for the clarification of the case.⁷⁶ The rapporteur decides, either on his or her own initiative or upon the request of one of the litigants, to take the measures he deems necessary for the investigation, such as appointing experts, hearing witnesses under oath, questioning individuals, etc. He may request the administration to provide reports and records and to call upon specialized staff to ask them about technical and material aspects.⁷⁷ The rapporteur is therefore given a wide array of investigatory powers to establish the facts, with little to no limitations, other than he must respect the rights of defence and conduct the investigation in an impartial manner.⁷⁸

The report of the rapporteur includes a summary of the case, as well as the facts and legal points that must be resolved in his opinion. The litigants have access to the report and can submit their written comments.⁷⁹ Finally, the decision is taken following secret deliberations by a body composed of one President and two members of the State Council, one of which is the rapporteur. The decision is adopted unanimously or at the majority, and it is delivered in a public hearing within a period of three months after the end of the proceedings.⁸⁰

While the decisions of the rapporteur can be appealed before the Chamber that is in charge of the case, his decisions are not reasoned and, as a member of the Chamber, he also participates in the appeal decision.⁸¹ This gives rise to serious concerns about the impartiality of the Chamber making the decision on the appeal of the rapporteur’s decisions.

The same issue appears at the level of the Chamber’s final judgment, where the rapporteur is part of the Chamber adjudicating in the case he has investigated himself. In a Chamber composed of three members, the opinion of the rapporteur, who may even be the President of the Chamber, will evidently have much weight. In the view of the ICJ, this could have the effect of creating doubt regarding the impartiality of the court, both in reality and in appearance. The European Court of Human Rights has for instance held that the presence of an investigative judge on the bench during a trial for which he had conducted the investigation provided grounds for a perceived lack of impartiality (what the European Court calls “objective impartiality”), regardless of the fact that there was no reason to doubt the investigative judge’s actual impartiality (what the Court calls “subjective impartiality”).⁸²

⁷⁴See articles 67 and following of the Statute of the State Council.

⁷⁵Statute of the State Council, articles 78-79. The President of the Chamber can himself act as rapporteur.

⁷⁶Statute of the State Council, article 79.

⁷⁷Statute of the State Council, articles 84.

⁷⁸Statute of the State Council, article 85.

⁷⁹Statute of the State Council, article 88.

⁸⁰Statute of the State Council, article 89.

⁸¹Statute of the State Council, article 86.

⁸²ECTHR, *De Cubber v. Belgium*, Application no. 9186/80, 26 October 1984, paras. 24 to 30. See also *Grande Stevens v. Italy*, Application no. 18640/10, 4 March 2014, paras 124 to 161, holding similar concerns to arise in relation to administrative tribunals. In the case of the Lebanon State Council, unlike in *Grande Stevens v. Italy*, there is not further challenge to a compromised decision of the State Council to another fully independent and impartial court, so

The bench of the Chamber hearing the case should be made up entirely of judges who have played no prior role in the investigation of the case. The ICJ therefore recommends that the Lebanese authorities amend the provisions of the Statute of the State Council to provide that the rapporteur-judge in a case may not sit on the bench of the Chamber making decisions in that case regarding: 1) the appeal of the decisions of that rapporteur-judge (article 86), and 2) the final decision (article 89).

ii. Right to a public and oral hearing

In the framework of Lebanese administrative proceedings, no provision is made for oral hearings. This is the case both for the State Council and, once they are established, for the first instance administrative courts (the Statute of the State Council explicitly provides that the procedure in both instances is the same).⁸³ The arguments of the parties are presented through a series of written arguments submitted as claims or as responses to the opponents' claims.

More specifically, the claimant has two months from the date of adoption or notification of the administrative act to submit his claim. The respondent has four months to reply, and the claimant two additional months for rebuttal. Moreover, once the investigations are completed, both parties may submit their written comments in response to the rapporteur's final report. The State Council then disposes of three months to make its decision through secret deliberations. The decision is rendered publicly.⁸⁴

As was explained earlier, proceedings before the administrative courts including the State Council can constitute a "suit at law" within the meaning of the International Covenant on Civil and Political Rights.⁸⁵ The Human Rights Committee has stated that, "All trials in criminal matters or related to a suit at law must in principle be conducted orally and publicly", although "the requirement of a public hearing does not necessarily apply to all appellate proceedings which may take place on the basis of written presentations, or to pre-trial decisions made by prosecutors and other public authorities."⁸⁶

The ECtHR has held that in proceedings before a court of first and only instance, the right to a "public hearing" under article 6(1) of the European Convention of Human Rights entails an entitlement to an "oral hearing",⁸⁷ unless exceptional circumstances justify excluding such a hearing.⁸⁸ According to the Council of Europe, proceedings during the judicial review of administrative acts should be held publicly, other than in exceptional circumstances.⁸⁹ The exceptional circumstances in question essentially comes down to the nature of the issues to be decided by the court.⁹⁰

As previously mentioned, the State Council is currently the only administrative jurisdiction in Lebanon. In most cases, it acts as the first and last instance court in administrative proceedings (see section below on appeal of the judicial review of an administrative decision). The State Council, through the rapporteur's report and the

it is clear that the combination of investigative and adjudicative functions in the State Council would not be consistent with the right to an impartial tribunal.

⁸³ Statute of the State Council, article 67.

⁸⁴ Statute of the State Council, article 89.

⁸⁵ Human Rights Committee, General Comment no 32, para 16.

⁸⁶ Human Rights Committee, General Comment no 32, para 28.

⁸⁷ ECtHR, *Fredin v. Sweden (no. 2)*, Application no. 18928/91, 23 February 1994, paras 21-22; *Jacobsson v. Sweden (no. 2)*, Application no. 8/1997/792/993, 19 February 1998, para. 46.

⁸⁸ ECtHR, *Hesse-Anger and Hanger v. Germany*, Application no. 45835/99, 17 May 2001.

⁸⁹ Recommendation Rec(2004)20 of the Committee of Ministers of the Council of Europe to member states on the judicial review of administrative acts, 15 December 2004 [CoM Rec(2004)20] article B(4)f).

⁹⁰ ECtHR, *Miller v. Sweden*, Application no. 55853/00, 8 February 2005, para. 29.

written submissions of the parties, examines both the facts and the law of the cases presented before it.

The right to a public hearing implies the right an oral hearing at least before one instance of the proceedings.⁹¹ Furthermore, the fact that civil proceedings on the merits are conducted in private in accordance with a general and absolute principle, as is the case in Lebanon, without the litigants being able to request a public hearing on the ground that their case presents special features, is not in principle compatible with the right to a public hearing.⁹²

The kinds of exceptional circumstances that could justify proceedings without an oral hearing could include cases where there are no issues of contested credibility or facts which might necessitate a hearing and where the court may fairly and reasonably decide the case on the basis of the litigants' submissions and other written materials⁹³, or in cases raising merely legal issues of a limited nature, such as where the State Council acts as a cassation authority.⁹⁴ If the applicant has had an opportunity to present his or her case orally at a public hearing at first instance, the requirement of a public hearing will not necessary apply to appellate proceedings conducted exclusively on the basis of written submissions.⁹⁵ On the other hand, oral hearings are clearly necessary for instance where the courts' jurisdiction extends to issues of law and important factual questions⁹⁶, where the court must assess whether the facts were correctly established by the authorities⁹⁷, or where circumstances would require the courts to gain an impression of the applicants to give them the right to explain their personal situation.⁹⁸

The ICJ is therefore of the view that the law should be amended to provide, at a minimum, at least until such time as the first instance administrative tribunals are operating the litigants must be able to request a public hearing before the State Council, and the right to be granted such a hearing absent exceptional circumstances. The possible reasons for refusing such a hearing should also be clearly stipulated and should be linked to the considerations stated in the paragraphs above, i.e. that there are no issues of contested credibility or facts. The law should also provide that once the first instance administrative tribunals are operating, litigants will have the right to an oral hearing in first instance administrative tribunals in all cases, absent exceptional circumstances. (Only once the administrative tribunals of first instance are operating and generally conducting public and oral hearings, could consideration be given to returning to an exclusively or predominantly written procedure before the State Council.)

iii. Appellate Role of the State Council

According to article 60 the Statute of the State Council, the first instance administrative courts are the courts that ordinarily adjudicate in administrative cases. The State Council, on the other hand, is:

- The appeal authority for decisions of the first instance administrative courts;

⁹¹Human Rights Committee, General Comment no 32, para 28 ; ECtHR, *Fischer v. Austria*, Application no. 16922/90, 26 April 1995, para. 44; *Salomonsson v. Sweden*, Application no. 38978/97, 12 November 2002, para. 36.

⁹²ECtHR, *Martinie v. France*, Application no. 58675/00, 12 April 2006, para. 42.

⁹³ECtHR, *Döry v. Sweden*, Application no. 28394/95, 12 November 2002, para. 37; *Saccoccia v. Austria*, Application no. 69917/01, 18 December 2008, para. 73.

⁹⁴ ECtHR, *Allan Jacobsson v. Sweden (no. 2)*, Application no. 8/1997/792/993, 19 February 1998, para. 49; *Valová, Slezák and Slezákv. Slovakia*, Application no. 44925/98, 1 June 2004, paras 65-68.

⁹⁵Human Rights Committee, General Comment no 32, para 28 ; *R.M. v. Finland*, Communication 301/1998, UN Doc. CCPR/C/35/D/301/1988 (1989), para. 6.4.

⁹⁶ECtHR, *Fischer v. Austria*, Application no. 16922/90, 26 April 1995, para. 44.

⁹⁷ECtHR, *Malhous v. the Czech Republic*, Application no. 33071/96, 12 July 2001, para. 60.

⁹⁸ECtHR, *Andersson v. Sweden*, Application no. 17202/04, 7 December 2010, para. 57.

- The appeal or cassation authority for decisions of administrative bodies or courts who are granted judicial capacity and are regulated by special laws⁹⁹;
- The first and last instance court in other cases.

Article 61 of the Statute of the State Council enumerates the cases where the first instance administrative courts should have competence. These include among other things: compensation claims for damages resulting from public works or the enforcement of public interests or for damages resulting from the administrative functioning of Parliament; cases related to administrative contracts, transactions, obligations or privileges conducted by the public administration or administrative departments of the Parliament to ensure the functioning of public interests; cases involving employees or individual disputes relating to the staff of the Parliament; cases concerning public property.

However, because the first instance courts have yet to be established and operating in Lebanon, the State Council represents the only administrative jurisdiction and therefore adjudicates in all these cases. Therefore, it acts as first and last resort in all important proceedings seeking to invalidate regulatory decrees or acts (in particular in cases of abuse of power), for administrative elections, for taxation, or for the appropriateness, legality or interpretation of administrative acts.

As the Council of Europe has recommended, "The decision of the tribunal that reviews an administrative act should, at least in important cases, be subject to appeal to a higher tribunal, unless the case is directly referred to a higher tribunal in accordance with the national legislation".¹⁰⁰ The African Commission on Human and Peoples' Rights, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, also affirms that "the essential elements of a fair hearing" include "an entitlement to an appeal to a higher judicial body" (Principle A.2(J)).

With a view to strengthening the guarantees of due process in the framework of the administrative court system, and thus reinforcing the rule of law, the ICJ recommends that the Lebanese authorities proceed with urgency to the establishment of the first instance administrative courts. This should both significantly increase the overall capacity of the system for judicial review of administrative actions, and allow the State Council to fulfil the appellate role for which it was designed, in particular in important cases that may affect human rights or individuals' interests.

iv. Execution of the judgments of the State Council

According to information available to the ICJ, while the administration in Lebanon is, in principle, obliged to enforce the decisions rendered by the State Council, such decisions are often not actually implemented in practice. The Euro-Mediterranean Human Rights Network, for example, found that:

The enforcement of judgments rendered by the Lebanese courts frequently encounters obstacles. This problem particularly affects the State Council whose decisions are often not enforced, though the administration is in principle obliged to enforce the decisions rendered by administrative courts. In July 2003, the Chamber of Deputies recommended to the government to respect judicial decisions and enforce them without delay. Until now, this recommendation has been ignored.¹⁰¹

⁹⁹ See also Statute of the State Council, article 114 and 117. For example, the *Shura* Council is competent to hear appeals of decisions of the Court of Audit, see Legislative Decree No. 82 of 16 September 1983 (with 1985 and 1992 amendments), article 79, available at (in Arabic): <http://www.coa.gov.lb/subject.php?id=5>.

¹⁰⁰ CoM Rec(2004)20, article 4(i).

¹⁰¹ Euro-Mediterranean Human Rights Network, *Lebanon: The Independence and Impartiality of the Judiciary*, 2010, p. 34.

This is in spite of several legal provisions according to which the decisions of the State Council are binding upon the administration, and allowing the State Council to impose coercive and punishment measures, in addition to the power to annul administrative acts. Indeed, the Statute of the State Council explicitly provides that the decisions of the State Council are binding upon the administration, which must comply with the legal provisions as described in these decisions.¹⁰² Under article 123, the competent department ensures, in accordance with the provisions of the Code of Civil Procedure¹⁰³, the execution of the judgments issued by the State Council or by the administrative courts in favour of individuals.¹⁰⁴ The head of the "implementing" department makes the decisions in regard to the procedural difficulties of execution, whereas the administrative court that issued the decision to be executed makes the decisions in regard to the any other problems.¹⁰⁵

Moreover, the court may impose a coercive sanction, which is distinct from any claim for damages, when its decision is not executed.¹⁰⁶ In addition, any employee of the administration who uses his authority or influence, directly or indirectly, to hinder or delay the implementation of the decision of the State Council is liable to a fine of three to six months' salary before the Court of Audit.¹⁰⁷

In accordance with its obligations under the ICCPR, Lebanon must not only ensure the effective protection of the rights contained in the Covenant, but must also provide accessible and effective remedies for individuals to vindicate those rights.¹⁰⁸ Article 2(3) provides in part that States must ensure that "the competent authorities shall enforce" remedies granted, including judicial remedies, for violation of rights protected by the Covenant. The African Commission on Human and Peoples' Rights, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, affirm that "any remedy granted shall be enforced by competent authorities" and that "any state body against which a judicial order or other remedy has been granted shall comply fully with such an order or remedy" (Principle C(c)(iii) and (iv)). The ECtHR stated that the right to a fair trial "would be illusory if a State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party[...] Execution of a judgment given by any court must be regarded as an integral part of the 'trial' for the purposes of Article 6".¹⁰⁹

This is of particular importance in administrative proceedings where the claimant seeks the annulment of an administrative decision and the removal of its negative effects on his or her interests and, often, of his or her rights. The obligation to respect and to enforce final judgments in such circumstances lies with the State and is equally valid regardless of whether courts or other entities are responsible for execution. The lack of funds or resources is not a sufficient reason for a state to fail to execute a judgment.¹¹⁰

Most importantly, the effective execution of a judgment entails that a final and binding judicial decision should be enforced within a reasonable period of

¹⁰² Statute of the State Council, article 93.

¹⁰³ Lebanese Code of Civil Procedure, articles 564 and following.

¹⁰⁴ In accordance with article 569 of the Lebanese Code of Civil Procedure, the court that issues the decision that is not executed, either in whole or in part, may determine a fine.

¹⁰⁵ Statute of the State Council, article 125.

¹⁰⁶ Lebanese Code of Civil Procedure, article 569.

¹⁰⁷ Statute of the State Council, article 93.

¹⁰⁸ HRC, General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.1326 (2004), para. 15.

¹⁰⁹ ECtHR, *Hornsby v. Greece*, Application no. 18357/91, 19 March 1997, paras 40-41.

¹¹⁰ Recommendation Rec(2003)16 of the Committee of Ministers to member states on the execution of administrative and judicial decisions in the field of administrative law [CoM Rec(2003)16], article (II)2.

time.¹¹¹Inaction by the executing authorities or excessive delays in implementing court decisions are violations of the right to a fair trial and the right to an effective remedy.¹¹²

In administrative cases, some issues may arise where a tribunal issues a decision that is not favourable for the public administration. Yet, administrative courts must be empowered to decide upon an effective remedy and to ensure the implementation of its decisions. According to the Council of Europe's Recommendation Rec(2003)16 on the execution of administrative and judicial decisions in the field of administrative law, in cases of execution of decisions regarding administrative authorities:

- a. Member states should ensure that administrative authorities implement judicial decisions within a reasonable period of time. In order to give full effect to these decisions, they should take all necessary measures in accordance with the law.
- b. In cases of non-implementation by an administrative authority of a judicial decision, an appropriate procedure should be provided to seek execution of that decision, in particular through an injunction or a coercive fine.
- c. Member states should ensure that administrative authorities will be held liable where they refuse or neglect to implement judicial decisions. Public officials in charge of the implementation of judicial decisions may also be held individually liable in disciplinary, civil or criminal proceedings if they fail to implement them.¹¹³

In a report by the International Association of Supreme Administrative Jurisdictions, of which Lebanon is a member, the mechanisms and powers of administrative courts for enforcing their decisions in a large number of countries are examined.¹¹⁴Such measures can include, but are not limited to:

- Giving the State Council full authority for the enforcement of its decisions¹¹⁵; allowing the administrative judge to appoint another authority if he or she considers that it is better placed in order to enforce the court's decision¹¹⁶; allowing the administrative judge to request the aid of another power of the State to decide upon the proper means for the implementation of the court's decision¹¹⁷; instituting mechanisms of assistance to the court in cases of administrative inaction¹¹⁸;
- Adopting measures to avoid administrative inaction, e.g. granting a time-period in the judgment for execution of the judgment, thus avoiding measures taken for delaying purposes¹¹⁹; stating in the written judgment, in specific and clear terms, the duties set upon the authority¹²⁰;
- Inciting enforcement or dissuading inaction, e.g. allowing the court to issue injunctions in specific circumstances, including precise instructions for the

¹¹¹ See Human Rights Committee, *Czernin v. Czech Republic*, UN Doc. CCPR/C/83/D/823/1998 (2005), para. 7.5; ECtHR, *Horsnby v. Greece*, Application no. 18357/91, 19 March 1997, para. 40.

¹¹² Human Rights Committee, *Czernin v. Czech Republic*, UN Doc. CCPR/C/83/D/823/1998 (2005), para. 7.5; ECtHR, *Horsnby v. Greece*, para. 45.

¹¹³ CoM Rec(2003)16, article II(1)(a)-(c).

¹¹⁴ International Association of Supreme Administrative Jurisdictions, *The Execution of Decisions of the Administrative Court*, VIIth Congress, Madrid, 2004, available at: http://www.aihja.org/images/users/1/files/2004_Madrid_Congress_General_Report_VIII_congres_VIII_va_0.pdf.

¹¹⁵ *Australia and Finland*.

¹¹⁶ *Switzerland*.

¹¹⁷ *Congo*.

¹¹⁸ *Italy*.

¹¹⁹ *Greece*.

¹²⁰ *England and Wales, Egypt, Greece and Luxembourg*.

execution, or *astreintes* (a "warning")¹²¹; the imposition of interest when pecuniary obligations are involved.

The ICJ urges Lebanese authorities to take further measures to ensure the prompt and exhaustive implementation of the final decisions of the State Council, for example by deepening the mechanisms and sanctions of article 93 of the Statute of the State Council.¹²²

In light of the above, the ICJ calls on the Lebanese authorities to amend the Statute of the State Council to:

- i. Ensure that the Chamber of the State Council hearing the case is impartial in reality and in appearance by:**
 - a. including a provision according to which administrative judges may not adjudicate in cases where the administrative act, regulation or decision contested in one for which they acted in an advisory capacity;**
 - b. providing that the rapporteur-judge in administrative proceedings may not adjudicate in appeals of his or her own decisions and in the final decisions of a case in which he or she conducted the investigations;**
- ii. Provide for the right to a public and oral hearing in all first instance proceedings, and for litigants to request a public hearing for proceedings at the State Council. (During such period in which the first instance tribunals remain inoperative, and the State Council is the sole instance, persons should have the right to a public and oral hearing in all State Council proceedings). Reasons for refusing such a hearing should remain exceptional and be restricted to cases that do not involve issues of credibility or assessment of facts, but only to legal or technical issues that do not require the court to gain an impression of the parties;**
- iii. Proceed, in the briefest delay, to the establishment of the first instance administrative courts.**
- iv. Ensure that the final decisions of the State Council are promptly and effectively executed, including by providing further mechanisms and sanctions to induce the public administration to execute administrative decisions issued against them.**

¹²¹In French Law, the "*astreinte*" is the imposition, notably by the enforcement judge, of a sum of money per day, week or month, of delay in the execution of the judgment or obligation.

¹²² On this, see the speech of the President of the State Council, Mr Chucri Sader, "La protection des droits fondamentaux lors de l'exécution des décisions du juge administratif", available at: <http://www.ahjucaf.org/La-protection-des-droits.html>.

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