



# **The Right to Fair Trial in Lebanon**

**A Position Paper on Guarantees during  
Court Proceedings, Detention and Appeal**



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# Table of Contents

<b>Acknowledgement</b>	<b>7</b>
<b>Fair Trial in the Lebanese Context</b>	<b>8</b>
<b>The Right to Have Adequate Time and Facilities to Prepare for Trial</b>	<b>9</b>
<b>Independence and Competence of Judges</b>	<b>10</b>
<b>Judicial Due Process</b>	<b>12</b>
<b>The Right to Appeal, Compensation and the Finality of Court Decisions</b>	<b>13</b>
<b>Conclusions and Recommendations</b>	<b>14</b>
<b>To the Lebanese Parliament</b>	<b>14</b>
<b>To Civil Society</b>	<b>16</b>
<b>To the Lebanese Government</b>	<b>16</b>



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# Fair Trial in the Lebanese Context

Fair trials and due process were established as a minimum threshold of judicial guarantees. Through the adoption of contemporary international legal instruments, fair trials and due process were adapted into national legislations, including the Lebanese legal framework. The basic principles of fair trial are present in the Lebanese justice system, such as the right to resort to lawsuits, the right to legal counsel, and the right to not be prosecuted twice for the same crime. Despite these rights being guaranteed in national and international agreements, Lebanese criminal justice practices have not always functioned according to the obligations set forth within them. By expanding on the key components of fair trial, this paper will present and evaluate the reality of fair trial and due process in Lebanon.

Ensuring the rights of an individual during arrest and investigation is fundamental but the individual's rights during their trial cannot be guaranteed until their rights during court proceedings, detention, and appeal are respected as well. A violation in any part of the trial process endangers the whole concept of fair trial and undermines the rule of law. Lebanese society has always been skeptical about the fairness of trial. A focus group conducted by ALEF showed a generally negative attitude towards Lebanon's trial system. They found it highly unlikely to have a fair trial due to constant favoritism, socio-political connections (*wasta*) and nepotism.

# The Right to Have Adequate Time and Facilities to Prepare for Trial

The lawyer representing the accused should be given **sufficient time to prepare for the trial** and the defense of the client as guaranteed by international<sup>1</sup> and Lebanese law<sup>2</sup>. Lebanese law, however, does allow for trial in absentia in criminal matters as soon as the relevant judicial authority has completed the investigation. This principle however does not resonate with former prisoners who were arbitrarily detained without charge, and thus did not have an actual case to prepare while lawyers claimed they always had enough time to prepare their clients<sup>3</sup>.

In order for a lawyer to be able to adequately prepare their defense<sup>4</sup>, they should be able to **interview the witnesses** under the same conditions as the opposing party regardless of whether they are testifying on the behalf of the accused or against them. Former prisoners said that this is extremely important since it could guarantee a fair trial. In a few cases, however, the court chose not to listen to certain witnesses who could have proven the innocence of the accused<sup>5</sup>.

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1 ICCPR, Article 14(3-b)

2 4<sup>th</sup> Chamber Cassation Court, Decision num. 25, 20 March 1973

3 LCPS, Right to a Fair Trial Focus Group Report, LCPS, 2015

4 See ICCPR, Article 14(3-e)

5 LCPS, Right to a Fair Trial Focus Group Report, LCPS, 2015

# Independence and Competence of Judges

Additionally, the accused has the **right to have their case reviewed by a competent tribunal within a reasonable delay**. The accused should be tried soon following their arrest in a public hearing by a “competent, independent, and impartial tribunal established by law<sup>6</sup>”. This is normally guaranteed internationally<sup>7</sup> and nationally<sup>8</sup>; however, in Lebanon there continues to be a vast proportion of the total prison population in pre-trial detention. As of February 2016, approximately 54.09% of total prisoners have yet to have a trial. A few who were finally sentenced in 2015, had awaited trial since 2007 following their arbitrary arrests after armed clashes between Fateh Al Islam and the Lebanese Army in Naher el Bared. Their trials were systematically postponed mainly due to the long period of judicial recess.<sup>9</sup> Hearings proceeded in early 2015 as the Judicial Council issued 23 death penalty sentences. Despite an acceleration of court proceedings, which raised concerns about unfair trials in Lebanon, the delay in sentencing is indicative of a lack of proper due process of the courts. The trial must also be public because the presence of observers and public interest pressures the court to be fair in its ruling.

For the tribunal to be truly competent in making a fair decision, the **judges**, within the limits of the law, **must be independent and impartial**<sup>10</sup>. The perception among Lebanese youth and former prisoners participating in a focus group by ALEF is that rich defendants, and those with strong backing or connections “do not even get transferred to the court since they are released beforehand”<sup>11</sup>. On the other hand, judges never admit that they’ve been subjected to political pressures.<sup>12</sup> This pressure to change verdicts based on political interference is related in part to the appointment of judges based on a decree by the government, and not by a politically neutral organ.

This is not based on a defined system and should be done according to the integrity, competence, and experience of the judge; however, this is not always the case. Political influence in the

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6 ICCPR, Article 14(1)

7 ICCPR, Articles 9(3), 14(1), and 14(3-c)

8 Lebanese Code of Civil Procedure, Articles 4(2), 376, and 484

9 Al Karama. “Lebanon: Respect UN Opinion, Release Nahr al Bared Detainees.” Al Karama. <http://en.alkarama.org/1955-lebanon-respect-un-opinion-release-nahr-al-bared-detainees> (accessed January 17, 2016)

10 ICCPR, Article 14(1); Lebanese Constitution, Article 20

11 LCPS, Right to a Fair Trial Focus Group Report, LCPS, 2015

12 LCPS, Right to a Fair Trial Focus Group Report, LCPS, 2015

appointment of judges has corrupted the system.<sup>13</sup> One high ranking official in the Internal Security Forces, Brigadier Charbel Matar, disclosed that some judges do exert pressure on police investigators so they speed up the process or get confessions from detainees. Judges also turn a blind eye to detainees who have been tortured in prison<sup>14</sup>. One Lebanese lawyer when interviewed by ALEF said that if he had a problem with the law, he would resort to court. However, he would not go to the police because he does not trust them and that there is where most violations take place.

The impartiality of judges and their independence are put in jeopardy by the Military Court where the majority of judges are from the military, which cannot be objective while trying civilians. The judges are also appointed by the Minister of Defense based on the recommendations of the affiliated military body, affecting their degree of independence. The Judicial Council, another court which is subject to influence by political parties in power, is often criticized for being very vulnerable to political pressures, especially since its cases are given by the Cabinet.

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<sup>13</sup> Elias Chalhoub, Report on the State of the Judiciary in Lebanon, Arab Center for the Development of the Rule of Law and Integrity, n.d.

<sup>14</sup> The Daily Star, "Qortbawi: Lebanon has not implemented anti-torture protocols" February 15, 2012, <http://www.dailystar.com.lb/News/Politics/2012/Feb-15/163311-qortbawi-lebanon-has-not-implemented-anti-torture-protocols.aspx>

# Judicial Due Process

The **sentences issued by the tribunal have to be proportional to the offenses that have been committed**. Felonies, infractions, or misdemeanors are based on the laws relating to the offense at the time of its occurrence. If a heavier penalty was subsequently imposed on the same offense, the offender will not be sentenced based on the new penalty, since the offense they committed occurred previous to the updated penalty. However, if a lighter penalty is subsequently imposed, the offender does benefit from an updated penalty<sup>15</sup>. In addition, sentences are handed down at the same time as the verdict. The defense can only present evidence and arguments regarding sentence during trial, which may undermine the defense's argument.

There is no consistency regarding the sentences issued since many judges believe the minimum sentences for certain offenses are too harsh, not to mention that alternatives to incarceration are rarely used<sup>16</sup>. The death penalty can only be imposed for the most serious crimes in accordance with the law<sup>17</sup>, and the process in which it was issued must abide by all the principles of a fair trial. Anyone sentenced to death has the right to seek amnesty, pardon, or commutation of the sentence. The death penalty cannot be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women<sup>18</sup>.

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15 ICCPR, Article 15(1); Lebanese Criminal Code, Chapter 2

16 American Bar Association, *Detention Procedure Assessment Tool for Lebanon*, April 2012, p. 51.

17 ICCPR, Article 6(2); Lebanese Criminal Code states that the death penalty shall be imposed for the "gravest of crimes"

18 ICCPR, Articles 6(4) and 6(5)

# The Right to Appeal, Compensation and the Finality of Court Decisions

Anyone convicted of a crime has the **right to appeal** the sentence, and have the case reviewed by a higher judicial authority<sup>19</sup>. In Lebanon, the Court of Appeal re-examines the case if requested by the defendant or the public prosecutor. Once requested an appeal by the Court of Cassation follows. However, defendants often miss the deadline to file an appeal since the official judgment was not delivered to them before deadline.

Once a sentence has been issued, **the court decision is final**. A person cannot be tried again for the same case regardless of whether they had been convicted or acquitted<sup>20</sup>. This is respected in Lebanon in both law and practice.

**In case a person was wrongfully convicted of a crime, they have the right to compensation.** For instance, if newly discovered facts prove that the previously issued sentence is incorrect, and there has been a miscarriage of justice, the previously convicted person shall be compensated as long as the non-disclosure of the newfound fact is not attributable to them<sup>21</sup>. In practice though, these corrective measures are held up by many complications, and most often persons detained unlawfully are not given compensation. This is also seen when opening investigations into violence and torture by security forces without concluding them, let alone providing compensation.<sup>22</sup> This denies victims of the needed protection and resources to seek rehabilitation.

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19 ICCPR, Article 14(5)

20 ICCPR, Article 14(7)

21 ICCPR, Article 14(6); Lebanese Criminal Code of Procedure, Article 276

22 HRW. "Lebanon: Witnesses Detail Police Violence." Human Rights Watch. <https://www.hrw.org/news/2015/08/27/lebanon-witnesses-detail-police-violence> (accessed January 17, 2016)

# Conclusions and Recommendations

Lebanon holds, in theory, a well-organized judiciary that is respectful of basic international principles of justice. Although Lebanese legislation and criminal justice procedures comply with international standards in some areas, they are not always applied in practice. Little judicial will has been expressed to solve issues like the overcrowding of prisons, lengthy delays in trial, regularity of arbitrary arrests and the general lack of respect for the rule of law. In order to address these fundamental issues, ALEF recommends the following:

## To the Lebanese Parliament

- Ensure consistency of national laws with the ICCPR and other international obligations. All of which must be effectively available by law and in practice. The procedural safeguards must also be available for every detainee without discrimination.
- Strengthen provisions in the Code of Criminal Procedure.
  - ◆ To include the principle ‘innocent until proven guilty’.
  - ◆ To allow the separation of criminal files when a crime is committed with numerous individuals.
- Amend the following articles:
  - ◆ Article 32 of the CCP:
    - To include reasons for the arrest and factual and material grounds that would warrant strong suspicions.
    - To require the public prosecutor or deputy to motivate the decision for renewing the period of custody for an additional forty-eight hours.

- ◆ Article 47 of the CCP:
  - Reformulate the rights of a suspect or a person who is the subject of a complaint to the following: “To contact a member of his family, his employer, an advocate of his choosing and an acquaintance.”
  - Add a paragraph requiring the judicial police to inform the suspect that they have the right to remain silent.
  - Make it clear that once the lawyer is contacted, they are able to attend the interrogation of the suspect.
  - Add a paragraph stating that the judicial police have a duty to inform the detainee that should they not have the sufficient funds to appoint a lawyer, they can have one appointed to them by the Beirut or Tripoli Bar Associations’ Legal Aid Committee.
  - Add a paragraph that specifically states that if the judicial police fail to inform the suspect of their rights upon arrest, the investigation forthwith is null.
  
- ◆ Article 107 of the CCP:
  - Include a paragraph that states that when pre-trial detention is decided on, the suspect will be informed of the following rights:
    - The right to be assisted by legal counsel of their choice or be informed of the right to have legal aid appointed to the case.
    - The right to challenge the lawfulness of the detention and be released if the detention is not lawful.
    - The right to communicate and be visited by family.
    - The right to have the pre-trial detention reviewed by a court of law at short periods.
    - The right to have proceedings conducted without undue delay.
  
- ◆ Article 108 of the CCP:
  - Establish a maximum period of pre-trial detention in cases of homicide, felonies involving drugs and endangerment of state security, felonies entailing extreme danger and crimes of terrorism.
  - In establishing this maximum period of pre-trial detention, the state should evaluate the maximum incarceration period for the crime and determine an proportionate duration for pre-trial detention.

- Strengthen provisions in the Criminal Code. Criminalize 'arbitrary detention' (expand notion of unlawful detention) and discipline and prosecute violators accordingly.
- To create a way to insure a fair trial is respected throughout the judicial proceedings, and sanction any violations of those guarantees.
- To establish a state lead legal aid system allowing all people to benefit from its judicial proceedings.

### To Civil Society

- Put in place a clear and public mechanism for regular monitoring of the judicial system, a detailed calendar for the reforms to be achieved, a regular evaluation of the implementation and regular and systematic consultations with human rights NGOs.
- Ensure outcomes adhere to international human rights standards.

### To the Lebanese Government

- Develop a centralized system used by the relevant ministries, who are competent in matters of criminal justice, to retrieve information about court decisions, laws, criminal files, etc.
- Transfer the management of prisons from the MoI to the MoJ pursuant to 1964 Decree-Law No. 17315.
- Close the MoD prison and detention facilities.
- Seek support from international donors to upgrade prison conditions so that they meet international standards, and set up external monitoring mechanisms.
  - ♦ Undertaking proper renovations and infrastructural improvements;
  - ♦ Separating pre-trial detainees from convicted criminals;
  - ♦ Separating detainees according to severity of the crime.
- Build additional detention facilities to house pre-trial detainees.
- Build additional holding cells at the various courthouses.
- Establish mobile courts in the North, South and Bekaa valley. These courts would resolve the issue of transportation and ensure quicker trials.

- Review, as a matter of urgency, the alternatives available to indefinite detention of foreigners by allowing temporary settlement or any other appropriate means to respect human dignity, especially for refugees from war torn regions.
- Monitor places of detention every month, according to article 402 of the CCP.
- The MoI and MoJ should have independent committees on arbitrary detention that serve as an internal oversight mechanism to assess the effectiveness in identifying and combatting arbitrary detention. The independent committees will develop a plan to strengthen the mechanisms accordingly. The MoI and MoJ must quickly discipline any individual responsible for failing to protect and respect the rights of detainees, regarding legal time limits and other legal standards.
- Adjust training and capacity building initiatives to the Lebanese reality by taking into account the current concepts of justice and the need to develop better mechanisms and tools.
- Raise public awareness about the rights of suspects in the criminal justice system.
- Lawyers, judicial police, public prosecutors and judges should gain a better understanding of the following:
  - ◆ Concepts of justice in the formal and informal systems
  - ◆ Role and function of detention and the rights of suspects
  - ◆ The roles of the lawyer, judicial police, public prosecutor and judges
  - ◆ The function and content of criminal procedural law related to detention
  - ◆ Alternative investigation and interrogation methods
  - ◆ Definition of arbitrary detention and remedies available Internal oversight mechanisms
- Lastly, the Lebanese Government must allocate the necessary budget and other resources to implement the above mentioned recommendations.

Principle	References in International Law	
Right to have case reviewed by Competent Tribunal in a Reasonable Delay	<p>ICCPR, Article 9(§3) 1966a: “Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment”</p> <p>ICCPR, Article 14(§1) 1966a: “[...] everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law”</p> <p>ICCPR, Article 14(§3-c) 1966a: “To be tried without undue delay”</p>	
Right to Counsel	<p>ICCPR, Article 14(§3-b) 1966a: “To have adequate time and facilities [...] to communicate with counsel of his own choosing”</p> <p>ICCPR, Article 14(§3-d) 1966a: “To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it”.</p>	
Right to have sufficient time to prepare for trial	<p>ICCPR, Article 14(§3-b) 1966a: “To have adequate time and facilities for the preparation of his defense”</p>	
Independence and Impartiality of the Judge(s)	<p>Article 14 §1 1966a: “[...] everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law”.</p> <p>UN General Assembly Resolution num.40/32 of 29 November 1985 on “Basic Principles on the Independence of the Judiciary”.</p>	

	Lebanese Law & Practice	Comments & Explanation
	<p>In Lebanon, article 7 of the Code of Civil Procedure recognizes to any legal or physical person, Lebanese and foreigner the right to access the justice system.</p> <p>Confessional Communities in Lebanon enjoy the status of legal persons as per article 2 of Personal Status Law.</p> <p>Article 372 of the Code of Civil Procedure guarantees that any party needs to be heard in its case and be entitled to defend itself.</p> <p>According to Article 4(§2) of the Code of Civil Procedure, any unjustified delay by Judiciary can be considered a “denial of justice” and holds the State liable under articles 741 and above.</p> <p>The public character of the hearings and trials is also guaranteed by the Code of Civil Procedure (articles 376 &amp; 484).</p>	<p>An old Common Law saying stresses that “<i>Justice must not only be done, it must also be seen to be done</i>”, highlighting the need of having public hearings as a means to underline the fairness of the trial.</p>
	<p>In Lebanon, the presence of defense counsel during the initial interrogation at the police station is not required by law, which opens the door to coerced confessions and other abuses. Furthermore, “<i>the legal aid system is inadequate to ensure due process is adhered to</i>”.</p> <p>Article 47 of Criminal Code of Procedure gives the right to any person accused to contact an attorney but procedure does not require a Counsel to be present during the investigative hearings. Hence, article 78 of Criminal Code of Procedure states that if the “<i>accused refuses to hire an attorney, the investigative judge does not force him to and records this in the official investigation note [...]</i>”.</p>	<p><i>A person accused has the right to legal counseling and benefit from a legal aid system if cannot be afforded.</i></p>
	<p>In Lebanon, the right of the defense is recognized by the Cassation Court, which considers that “<i>the most important judicial principle lies in the protection of the defense right</i>”.</p> <p>The Lebanese Justice system allows for trial <i>in absentia</i> in criminal matters, i.e. in the absence of the accused, as soon as the relevant judicial authority completed the investigation.</p>	<p><i>Any person facing prosecution should have enough time to plan and organize his/her defense.</i></p>
	<p>Article 20 Lebanese Constitution: “The judicial power shall be exercised by courts of various degrees and jurisdictions. It shall function within the limits of an order established by the law and offering accordingly the necessary guarantees to judges and litigants. The law shall determine the conditions and limits of the judicial guarantees. The judges shall be independent in the exercise of their functions. The decisions and judgments of all courts shall be rendered and executed in the name of the Lebanese People”.</p>	<p><i>The members of the Justice system need to address each and every case in an independent, professional and impartial manner.</i></p>

Finality of Court Decision	ICCPR, Article 14(§7) 1966a : “No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country”	
Proportional Sentencing	<p>ICCPR, Article 15(§1) 1966a: “[...] Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby”</p> <p>ICCPR, Article 6(§2) 1966a: “In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court”</p> <p>ICCPR, Article 6(§4) 1966a: “Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases”</p> <p>ICCPR, Article 6(§5) 1966a: “Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women”</p>	
Right to Appeal	ICCPR, Article 14(§5) 1966a: “Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law”	
Right to Compensation in case of Miscarriage of Justice	ICCPR, Article 14(§6) 1966a: “When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him”	

	<p>In Lebanon, this principle is respected both in law and practice.</p>	<p><i>A person cannot be tried or prosecuted for the same case twice.</i></p>
	<p>In Lebanon, <i>“persons convicted of a crime are sentenced by the same judge who convicted them. Sentences are handed down at the same time as the verdict, and the defense can only present evidence and arguments regarding sentence during trial, which may undermine the defense’s argument that the defendant is innocent. Sentences are generally not imposed in open court, although the judge must issue a reasoned decision”</i>.</p> <p>At the same time, Many <i>“including judges, believe that the minimum sentences required by law are too harsh. Judges do not take into account consistency when deciding on a sentence”</i>. Also, alternatives to incarceration are rarely used.</p> <p>The Criminal Code lists in its second chapter (legitimacy of the sanctions) the rules of the retroactivity of the sentences.</p> <p>On the issue of the death penalty, despite the moratorium on executions presently applied by the Lebanese authorities, the judiciary continues to sentence perpetrators to death for the <i>“gravest of crimes”</i> as listed in its Criminal Code, which is in line with its international obligations.</p>	<p><i>If found guilty, sentencing should be in accord with the category of the violation, whether a felony, infraction or misdemeanour.</i></p>
	<p>In Lebanon, the Court of Appeals has the capacity of reexamining a case if required by either the defendant or the public prosecution. Convicted persons have the right to file an appeal but need to respect a deadline. Often, defendants miss the deadline because they have not received the official judgment before then.</p> <p>The last appeals resort lies in the Court of Cassation, which can review the judicial decisions for felonies and misdemeanors as a last resort (articles 328-334 of Criminal Code of Procedure).</p>	<p><i>A judicial decision can be reviewed by a higher judicial authority.</i></p>
	<p>In Lebanon, the Criminal Code of Procedure recognizes situations when the Judiciary might commit mistakes against wrongfully accused persons and stipulated proper correction of such situations (article 276).</p> <p>In practice, such corrective measures are hindered by many obstacles: <i>“No remedies exist for persons detained unlawfully who have not yet been brought before a judge, although the law provides that once the illegal detention is discovered the officer who detained the individual illegally may be prosecuted”</i>.</p>	<p><i>In case a person was wrongfully convicted, this person is entitled to an official rehabilitation and financial compensation.</i></p>





