



The Right to Fair Trial in Lebanon

A Position Paper on Exceptional Courts

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The concept of a fair trial is directly challenged in Lebanon due to the presence of several exceptional courts. Their presence creates a form of justice that is outside the scope of ordinary law, allowing for a judiciary that is separate, inexpedient, and placed above the basic principles of the rule of law. These are embodied namely in the Military Court, the Judicial Council, the High Court of Justice, and the Personal Status courts. These courts and the prevalent practices within their structures do not adhere to international standards, and pose a direct threat to the independence of the judiciary, thereby allowing a myriad of abuses. Based on several cases and legal texts, this paper presents the reality of exceptional courts in Lebanon while reflecting on the principles of a fair trial.

The Military Court Jurisdiction

Although the Military Court is a judicial organ, it is part of the Ministry of Defense rather than the Ministry of Justice, which places it outside the scope of ordinary law and in violation of the principle of separation of powers¹, the hierarchy of norms², and the preamble of the Lebanese constitution³. It has jurisdiction over crimes such as spying, treason, and illegal connections with Israel by military personnel (army, internal security forces, general security, and officials in the military court). It also has jurisdiction over civilians charged with espionage, weapons possession, treason, draft evasion cases, and any personal conflict between civilian and military personnel.⁴

Challenges to Impartiality, and Competence of Judges

The Military Tribunal raises several concerns with regard to the right to a fair trial. This includes the right to be tried before a competent, independent and impartial court established by the law, and the right to a public hearing. These cannot be guaranteed by the Military Tribunal, especially for civilians. For example, the court has jurisdiction over cases linked to military personnel, and the appointment of its judges, who are predominantly military personnel, relies heavily on recommendations by main security institutions making it difficult for civilians to have complete trust in the independence and impartiality of the court.

The Military Tribunal is headed by an officer, a ranked colonel or higher, who is joined by three other lower ranking officers and one judicial judge in case of a felony. Or, in the case of a misdemeanor, a judicial judge and a lower ranking officer. The Military Court of Cassation has two benches, each headed by a judicial judge. Felony cases require a judge and four officers while misdemeanors require a judge but only two officers. The verdict is then determined by a majority vote. Even then, verdicts issued by the court do not require any explanation or justification, further encouraging arbitrary rulings.⁵

1 Charles-Louis de Secondat, Baron de Montesquieu: *La défense de «L'Esprit des Lois»* 1750

2 Lebanese Law of Civil Procedures, Article 2

3 Preamble of the Lebanese Constitution, Part e

4 Decree No. 24/68 of 13/4/1968, Article 24; Criminal Law, Articles 273 till 294; Military Sentences Law, Article 50

5 Myriam Mehanna. "Marshalling Justice in Lebanon: How Military Courts Violate the Conditions of a Fair Trial. Legal Agenda. <http://english.legal-agenda.com/article.php?id=713&lang=en> (accessed November 5, 2015)

Preliminary investigations may also be conducted by a military officer with a legal background. This structuring of the courts shows the overwhelming presence of military personnel compared to the judicial judges which in turn threatens fair trial guarantees such as, the right of defense and independence of the judiciary. In addition, the judicial judge acting as the public prosecutor for the military court is often bound by the decision of military leadership, stripping the judge of his power and independence from the military.

The way trials are conducted is also questionable in regards to fair trial standards. The Military Justice Code allows officers to be the accused's defense. The appointed officer is not required to be a law graduate, and could lack legal qualifications and experience. Lawyers can also be banned from court for up to three months in instances of "serious misconduct" during a trial. "Serious misconduct," is entirely dependent on the discretion of the court's president, with no chance for lawyers to defend themselves

A trial before a military court is public, but may be conducted in secret based on a decree issued by the presiding judge to "preserve public order or public morality"; minors may be barred from courtrooms in all cases.⁶ The lack of set criteria gives the presiding judge full discretion in deciding which hearings will or will not be made public: a clear violation of international standards of a fair trial.⁷ The defendant does have the right to appeal the decision in front of the Military Court of Cassation; however the conditions to undergo this action are strictly limited to cases of a petty crime, where the perpetrator was issued a fine, expropriated, or imprisoned following the court's decision⁸.

The manner through which military judges, who are not required to have a law degree, are appointed, undermines the independence of the court. They are appointed by the minister of defense based on the recommendations of the relevant military body instead of by the Ministry of Justice.⁹ Based on the rules set by the Working Group on Arbitrary Detention (WGAD), a military court is incompetent to try civilians and military personnel in the event of a rebellion, sedition, or any offence that jeopardizes a democratic regime. The court is also prohibited from imposing the death penalty. All of these standards have not been respected in Lebanon¹⁰.

Measures in Increasing the Occurrence of Arbitrary Detention

In the past years, there have been several reported cases of violations of rules established by the WGAD. Cases brought before the Military Tribunal in Lebanon can be of a non-military nature. In October 2015, the Military Tribunal detained two civilian activists, who participated in a protest in Beirut, for eleven days before releasing them on bail.¹¹ In May 2013, A Lebanese citizen was found guilty of keeping a portion of money he took from a friend's bank account when his friend asked him to take out money from an ATM. The man was required to spend two weeks in jail and

6 Decree No. 24/68 of 13/4/1968, Article 55
Law No. 328 of 07/08/2001, Article 178

7 ICCPR, Article 14(1)

8 Decree No. 24/68 of 13/4/1968, Articles 71&72

9 Donna El Hindi, *Guilty Until Proven Innocent* (Lebanon, ALEF, 2013), 45-46

10 Donna El Hindi, *Guilty Until Proven Innocent* (Lebanon, ALEF, 2013), 47-49

11 Al Jadeed. "Release of Wafiq Sleiman and Pierre Hachach", Al Jadeed. <http://www.aljadeed.tv/arabic/news/local/1910201533> (accessed on November 5, 2015)

pay a fifty thousand Lebanese Pound fine, thirty-three dollars. In May 2014, the Military Tribunal issued a sentence in absentia for two non-military individuals based on Article 534 of Penal Code, regarding “unnatural” sexual acts.¹² Sentences issued by military tribunals have included the death penalty, another violation of the WGAD.

Challenges of Military Court Jurisdictions in Time of Crisis

Since cases the Military Court deals with are largely related to national security, the executive, mainly the High Defense Council composed of military personnel, usually deals with them in complete secrecy. Authorities often wield the issue of “national security” to cover the conduct of the trials, hence violating the principles of fair and public trials¹³.

Even in times of crisis when the state has to adopt measures that derogate from ordinary law, fair trial principles should remain consistent with international law obligations and be respected.¹⁴ Military secrecy should not lead to the incommunicado detention of a person awaiting trial. Detainees should be held in registered and official places of detention. During the detention period, detainees should be allowed to see their lawyer and communicate with them in full confidentiality,¹⁵ which doesn’t always occur¹⁶. Placing the Military Court above the law allows for a variety of violations such as torture, arbitrary detention, and withholding access to legal counsel. This subsequently leads to using the court as a political tool for security and executive institutions, as exemplified by the case of the Palestinian refugees detained in the Naher el Bared conflict. According to interviews conducted by ALEF, some of the detainees involved in the conflict were electrocuted, raped, beaten on sensitive parts of the body with various tools and in various positions, and deprived of sleep. Some did not survive these, and died in prison.¹⁷ More recently, judicial actions taken by the Military Court following a series of anti-garbage protests in August 2015, further questioned its legitimacy. The court charged eleven protesters with rioting, throwing stones at police, and damaging public and private property.¹⁸ This decision was not only unlawful, as the court’s mandate provides no grounds for prosecuting such acts, but also depicts the Military Court’s ability to interfere in civil courts where they do not have primary jurisdiction. Although the incident created public outcry and was met with much criticism, no actions were taken to alter the decisions taken by the court.

Despite these shortcomings in upholding fair trial principles, some progress has been noted, as political will to reform the Military Court has put the subject at the forefront of certain political agendas. In May 2015, the March 14 alliance organized a conference to discuss the need to reduce the court’s prerogatives, define its role, and propose a legal substitute. This led to the formation of a follow-up committee comprised of several representatives from political parties, judicial bodies, and civil society. The committee is now tasked with presenting recommendations

12 National News Agency, “Judgments of the permanent military court on the 19th, 21st and 23rd on perpetrators of various crimes”, May 27, 2014, retrieved from: <http://www.nna-leb.gov.lb/ar/show-news/97402/>

13 ALEF Human Rights Violations Monitoring Unit, *Military Tribunal: A Breach in the Integrity of the Judicial System*. ALEF, 2010

14 ICCPR, Article 4

15 Decree No. 24/68 of 13/4/1968, Article 57

16 ALEF Human Rights Violations Monitoring Unit, *Military Tribunal: A Breach in the Integrity of the Judicial System*. ALEF, 2010

17 ALEF, *Lebanon: The Painful Whereabouts of Detentions*, ALEF, 2008

18 NNA, “Eleven charged with rioting on the 8th of October”, October 15, 2015, <http://nna-leb.gov.lb/en/show-news/50987/Eleven-charged-with-rioting-on-the-8th-of-October>

concerning the Military Court. In August 2015, Justice Minister Ashraf Rifi, presented a draft law that would limit the jurisdictions of the Military Tribunal to military crimes committed by military personnel only. The draft also proposed the establishment of specialized courts which would deal solely with cases involving terrorism, money laundering, human trafficking, and crimes “aimed at sowing sectarian discord and civil war in the nation by forming armed gangs”. The law also proposed the use of a two-stage appeals process that would annul the Judicial Council, which typically handles cases regarding national security. This is because the Judicial Council’s decisions are final and not subject to review or appeal. This law has yet to be scheduled for discussion in parliament.

Challenges to the Independence of the Judiciary

The State Council is the only administrative court in Lebanon. It deals with cases filed by individuals against the state, municipalities, or public institutions. It also provides a written opinion regarding government decrees upon the request of any ministry. The council's decisions are binding, and it has full jurisdiction over specific administrative and regulatory matters such as petitions for compensation from damage resulting from public works, and discipline of government employees.¹⁹ Even though the Council of Ministers approved a draft law which amends the State Council's constitution and aims at establishing primary administrative courts in each governorate. It would act as the first court while providing the right to appeal the decision to the State Council. This would enable the correction of any possible judicial mistakes and protect the judicial rights of citizens. This law has yet to be implemented as well.²⁰

The Judicial Council has jurisdiction over cases referred to by the cabinet and matters of external and internal state security. The council is criticized for being vulnerable to external pressures, most importantly its reflection of the political party in power at the time. Under Article 366 of the Code of Criminal Procedure, the judgments of the Judicial Council are not open for review. A clear violation of a fair trial, which requires both appeals and review.

The High Court of Justice is responsible for judging presidents and ministers. It is made up of seven deputies elected by the Chamber of Deputies and eight of the highest ranked Lebanese judges in Lebanon. The meetings are chaired by the highest ranked judge, and decisions are taken by a majority of 10 votes. Technically, the court has never performed its duties since no president or minister has ever been prosecuted; proof of the influence the executive power has on the judiciary. The court should also require a two-thirds vote to prosecute presidents and ministers for crimes or violations of the constitution.²¹

19 CLDH, Legal Aid in Lebanon, CLDH, 2014

20 "Project of Law to Amend the State Council Law: The Solution is in Implementing the Law Not Amending It", Legal Agenda, Accessed October 27, 2015. <http://www.legal-agenda.com/newsarticle.php?id=814&lang=ar>

21 Maya Mansour & Carlos Daoud, *Lebanon The Independence and Impartiality of the Judiciary* (Copenhagen, Euro-Mediterranean Human Rights Network, 2010), 17

Personal Status Courts: Challenges to Equality before the law

Since Lebanon does not have a civil code that regulates personal status matters - marriage, divorce, child custody and religious minorities - there are fifteen separate personal status laws and courts belonging to different religious communities. This is stipulated in Article 9 of the Lebanese constitution. Experts in law argue that article 9 of the constitution does not provide an exclusive right in regulating a person's personal affairs, especially when this process is in contradiction to the principle of equality stipulated in the constitution, which states that all Lebanese shall be equal before the law. When a Lebanese citizen marries in a foreign country, it can be registered in Lebanon, and the laws applied by the Lebanese courts in this case are the civil laws of that foreign country. Problems arise in such cases because Lebanese judges are not required to understand and learn about foreign laws and their application. In the event where the above case is coupled with a religious marriage in Lebanon, then the laws applied are those of the religion.

Every sect has had to present its personal status code to the government and parliament. Parliamentary ratification was to be issued only if the code did not contradict public order and the constitution.²² This never occurred since parliament only considers officially recognized sects without codifying their personal status laws or reviewing their contents. The Court of Cassation does not review the vast majority of the decisions taken by the personal status courts. Since, each recognized confession has its own court system that deals with personal status issues, proceedings cannot be performed in a civil court, as there is no such alternative. This issue exemplifies the inequality between individuals belonging to different religions in Lebanon.

²² Decree 60LR, Article 5

The personal status courts can also base their decisions on legal opinions issued abroad by high foreign tribunals or scholarly authorities, thus trespassing the legislative authority of the state.²³ These courts are not supervised by the state judicial bodies, and the qualifications of the religious judges vary between the different confessions but generally do not require a national law degree²⁴. The relevant oversight mechanisms by the state are inefficient, and inspectors are often appointed by religious authorities; preventing an unbiased opinion²⁵. In addition, financial barriers are a huge constraint in appointing a lawyer, in spite of the presence of fee exemptions that are granted arbitrarily and do not cover all legal expenses²⁶.

23 HRW, *Unequal and Unprotected: Women's Rights Under Lebanese Personal Status Laws* (United States of America, Human Rights Watch, 2015), 19-25

24 HRW, *Unequal and Unprotected: Women's Rights Under Lebanese Personal Status Laws* (United States of America, Human Rights Watch, 2015), 28

25 HRW, *Unequal and Unprotected: Women's Rights Under Lebanese Personal Status Laws* (United States of America, Human Rights Watch, 2015), 33-35

26 HRW, *Unequal and Unprotected: Women's Rights Under Lebanese Personal Status Laws* (United States of America, Human Rights Watch, 2015), 37-38

Conclusions and Recommendations

The systems through which exceptional courts are structured in Lebanon, combined with prevalent practices within these structures, are what give way for greater violations. They threaten the core principles of fair trial and spread impunity. A reform of this system according to the principles of fair trial is advised so that it becomes a form of justice like any other, and in order to achieve this, ALEF recommends the following:

To the Lebanese Parliament

- Ensure that the Military Court is an integral part of the general judicial system, and that such courts apply due process procedures that are recognized by International law to guarantee a fair trial.
- Pass a law amending article 1 of the decree No. 24/68 of 13/4/1968, transferring the Military Court from the Ministry of Defense to the Ministry of Justice.
- Pass a law to abolish the application of the death penalty.
- Pass a law adopting `restrictive jurisdiction for the Military Court to appropriate military matters, based on which the court will be allowed to try military officers and military cases only, and transfer to ordinary courts the jurisdiction of trying civilians for security issues.
- Establish a parliamentary commission to review past trials where allegations of human rights abuses, especially allegations of torture, arbitrary detention and denial of justice, have been made to restrict the jurisdiction of military tribunals to appropriate military matters, and to become a party to the International Criminal Court.
- Adopt the provisions of the European Neighborhood Policy, EU-Lebanon Action Plan in January 2007, which involves major commitments for the improvement of the human rights situation in Lebanon, especially with regard to developing an independent and impartial judiciary and to further reinforce the administrative capacity of the judiciary. To the Lebanese Parliament

To the Lebanese Government

- Ensure the implementation of the human rights conventions, namely the ICCPR, the UN Conventions against Torture and its Optional Protocol, recently ratified by Lebanon, with regard to the respect of fair trial and the prohibition of torture.
- Transfer the cases currently pending before the Military Court and involving civilians to ordinary courts where their cases can be settled expeditiously.

To Civil Society organizations

- As far as possible, put in place a clear and public mechanism for regular monitoring of the judicial military process, a detailed calendar for the reforms to be achieved, a regular evaluation of the implementation and regular and systematic consultations with human rights NGOs.

