



Law Proposal on Judicial Independence and Transparency

Why do we need this law?

Judiciary legislation is outdated

The judiciary is governed by Legislative Decree 150/1983 and its amendments. It has fallen behind on international standards (UN, EU, France, Italy, Belgium, Spain, Germany, Tunisia, Morocco).

Status of the judiciary is undermined

Since the main legislation was adopted, Lebanon witnessed a number of wars which affected the political system and the standing and independence of the judiciary within this system, as well as citizen confidence in the judiciary.

2030 Agenda for Sustainable Development: SDG 16

This law proposal falls under SDG16 which aims to “provide access to justice for all and build effective, accountable and inclusive institutions at all levels”. (Targets: rule of law, access to justice, anti-corruption, fundamental freedoms)

CEDRE reforms: the rule of law as a prerequisite for a favorable investment climate

There is no rule of law without a strong and independent judiciary. This draft law is an opportunity for the Lebanese State to signal a serious commitment to the CEDRE Agenda by taking concrete measures towards building strong and modern public institutions, fighting corruption and reinforcing the rule of law in a way that fosters a favorable investment climate.

Who developed this law proposal?

Legal Agenda worked on developing this law proposal over four years of desk and field research and consultations, with the aim of updating the law on the organization of civil courts in Lebanon, in light of international standards on judicial independence and taking into consideration the needs and specificities of the Lebanese judiciary.

What was the methodology adopted in developing the law proposal?

Legal Agenda invited a number of university professors, lawyers and party representatives to take part in a participatory drafting process with international standards of judicial independence as the reference adopted to swing the balance in case of diverging opinions. The law on the organization of the judiciary was divided into different themes, each of which was discussed on its own. Legal Agenda then published more than 20 research papers around the different themes and distributed them each

to 300 to 500 experts (judges, members of parliament, ministry of justice, bar associations, lawyers, university professors, etc.) asking for their feedback. The research papers were also published online, allowing for citizens' and readers' feedback as well. And after concluding the work on each theme, the final recommendations were gathered in a complete draft proposal on “judicial independence and transparency.”

Who submitted the law proposal to Parliament?

- The law proposal was signed by 9 Members of Parliament: Michel Moussa, Yassine Jaber, Chamel Roukoz, George Okais, Najib Mikati, Ali Darwish, Paula Yacoubian, Fouad Makhzoumi, Oussama Saad.
- MP Paula Yacoubian submitted the law proposal to the Secretariat of the Lebanese Parliament on 6 September 2018, and it was registered under number 257/2018.

Who supports this law proposal?

This proposal is supported by the “Civil coalition for judicial independence and transparency”, a coalition of 33 civil society organizations, which expresses a widespread will to improve the situation of the judicial system in Lebanon. Kulluna Irada has also decided to support the efforts of the civil coalition and work towards adopting this law and considering it as a top priority on the agenda of decision makers in Lebanon, and it has entered a partnership with Legal Agenda for this purpose.

What is the current status of the law proposal?

- The Chief of Parliament referred the law proposal to the Parliamentary Commission on Administration and Justice and the Office of the Prime Minister on 12 September 2018.
- The Parliamentary Commission on Administration and Justice is getting ready to put this law proposal on its agenda and start debating it.

Outlook

We consider that any serious reforms aiming at fighting corruption, instating the rule of law and building institutions in Lebanon should start with judicial independence and transparency. We therefore call upon all political forces to adopt this law proposal and consider it as a national priority that brings together all parties.

With our support for this law proposal, we seek to

elevate public debate and increase awareness and knowledge of the role of the judiciary and the need to reinforce the independence of tribunals and judicial institutions. We also seek to push for a participatory mechanism in the elaboration of all law proposals and to reaffirm the need for civil society participation in reform proposals and debates in Lebanon.

Main amendments

Increasing the independence and transparency of judicial institutions

- The composition of the Higher Judicial Council (HJC) is amended in a way to ensure its independence and the representation of different categories and grades of judges: the number of members is increased from 10 to 20, among which 9 elected judges (instead of 2), 4 ex officio judges, 3 judges chosen by their elected and appointed peers, 2 lawyers and 2 university professors.
- The independence of the Institute of Judicial Studies is increased: it is transformed from a department within the Ministry of Justice (MoJ) to a public institution (legal entity with administrative and financial independence) under the tutelage of the MoJ; and its functions are increased to include continuous training of

judges.

- The “Judicial Inspection Body” becomes the “Judicial Supervision Authority”, which reflects its different functions that go beyond inspection to include citizen outreach and enhancing the performance of tribunals. It also becomes an independent administrative body non-attached to the MoJ. And its internal transparency is increased as well as equality among its members. Its internal organization is also enhanced in a way to guarantee the specialization of members; to have effective communication with citizens; to elaborate plans and recommendations for improving the state of affairs of tribunals; and to improve its human and financial resources.

Increasing participation, independence and transparency in the organization of tribunals

- Defining the pillars and standards of judicial organization, which are absent in the present law, and which include: defining the objective of the organization of tribunals (which is to issue final rulings in the shortest time period, in the lowest cost and the best quality, and to reinforce collaboration among judges in order to achieve this objective); consecrating the principles of participation of judges in the organization of their affairs; natural judge; specialization of the judge; rotation of judges; bringing tribunals closer to citizens; equality and equitable regional

development; equality among judges and fair distribution of work.

- Increasing the administrative and financial independence of tribunals, especially through a dedicated budget for courts of appeal and reinforced administrative powers of the chief judge of the court of appeal, similarly to the powers of the court of cassation.

- Increasing the transparency of courts of appeal: the chief judge shall prepare an annual report and publish it on the court's website.

Striking a balance between the hierarchical organization of public prosecution and the independence of public prosecutors as magistrates

Instructions to public prosecutors are regulated as follows: general instructions shall be published and subject to comments and challenges; specific instructions shall be legal, in writing and include

legal motives, directed at the concerned prosecutor through his/her hierarchical superior, and kept in the case file.

Reinforcing the guarantees of performance and independence of the judge (provisions related to the status of judges and their career path)

- The entrance exam remains the main way of entering the judicial corps, and rules are adopted to increase its impartiality (such as limiting the weight of the oral exam in the final grade and making sure the decree of appointment is issued within one month of declaring the results, in order to protect the rights of the winning candidates and to secure new human resources). Strict rules and guarantees are also adopted to regulate recruitment among PhD holders and candidates with professional experience. The competent authorities are also under the obligation to hold periodical entrance exams until all vacancies are filled.

- Adopting the principle of periodic evaluation of judges and creating a personal file for each judge in order to follow their professional performance and provide objective criteria as a basis for appointments/promotions.

- Consecrating the principle of immovability of judges, with exceptions to this principle (related for instance to shifts based on the principle of rotation among judges), with guarantees that ensure the exceptions do not substantially affect the principle.

- Reinforcing transparency and objective criteria in the development of the project of judicial appointments and transfers (e.g. announcing vacant positions, receiving applications, and

making the appointments and shifts based on the objective criteria and evaluation results contained in the personal file of each judge).

- The appointments are issued by the HJC without the need for a decree by the Council of Ministers, except for specific positions such as the high offices who are automatically appointed to the HJC, the financial prosecutor and the public prosecutor of the court of appeal.

- Reinforcing the independence of the Disciplinary Council and canceling parallel disciplinary measures which do not fulfil the conditions of fair trial (declarations of incapacity are restricted to mental and physical incapacity). The notion of fault is defined and the principle of proportionality between the sentence and the degree of the violation is consecrated. The proposed text also forbids the shifting of a judge to a new position to be used as a disguised punishment, and includes a number of procedural rules guaranteeing fair trial.

- The judge is given the right to challenge all decisions related to his/her career path.

- The text expressly affirms the judges' freedom of expression and freedom of assembly which are guaranteed by the constitution, and only allows those limits to these freedoms that might be dictated by the principle of judicial independence.

About us

Legal Agenda

The Legal Agenda is a non-government, not-for-profit organization (registered under the number 2360 on December 22, 2009) based in Beirut. It aims to lift the barriers between the law and society in Lebanon in particular and the Arab region more generally so that lawmaking is no longer monopolized by those in power and can be understood and critiqued by ordinary citizens, not just legal experts. The Legal Agenda aims to follow legal developments in Lebanon and, increasingly, in the broader Arab region and to analyze them from a multidisciplinary perspective. To this end, it publishes articles and news bulletins and conducts academic research projects on socio-legal issues and developments therein. In particular, it addresses the issues of marginalized groups such as refugees, detainees, workers, handicapped persons, women, and homosexuals and their basic rights and freedoms. In order to institutionalize efforts to promote judicial independence in the Arab region, the Legal Agenda established the Regional Center for Judicial Studies and Policies in 2015. The center focuses on developing the studies and sciences related to the judiciary in the Arab region. The Center works on documenting reforms and best practices in the realm of the judiciary, carrying out independent legal research and studies on all aspects of the judiciary and judicial reforms, and holding annual intensive courses on specific judicial issues. These courses target judges, jurists, and researchers in the social sciences.

Kulluna Irada

Kulluna Irada is a civic organization for political reform. We believe we can set the foundations of a modern, secure, efficient, sustainable and just state through strong and fair governance. We are financed exclusively by Lebanese citizens: residents and members of the diaspora who want to bring positive change to their country. The internal governance of Kulluna Irada requires collegial decision making and involves strict rules to avoid any conflict of interest: members of the board have vowed not to run for elections and to renounce to participate in any public auction. Kulluna Irada believes in transparency, accountability and citizen participation as major constituents of good governance. We partner with Lebanese non-governmental organizations active in fields that are of interest to us and seek access to the information needed to shed light on the work of public institutions. Our goal is not only to expose issues, but also to propose solutions and work toward sustainably implementing them. Kulluna Irada believes that in order to be able to influence political reform we need to raise awareness on public issues while actively and constructively working on resolving them. This can be done by engaging constituencies of our society in a holistic way: engaged and concerned citizens, NGOs, experts, as well as local governments and members of Parliament and Government.

Civil Coalition for Judicial Independence and Transparency

A group of bodies and organizations who work on defending different rights and freedoms in different manners, and who believe in the essential role of the judge in the protection and consecration of rights and freedoms. These organizations believe that working on reinforcing the judge's independence and contact with different social groups, can increase the immunity and transparency of the judiciary, as well as its capacity to issue rulings in favor of social rights, and can therefore increase their chances of success in the different battles they are leading for the protection of rights and freedoms. The main objectives of this coalition are to work on strengthening the culture of judicial independence on the basis of international standards of judicial independence; to support any project that aims at reinforcing the principles of judicial independence and fair trial; to support the right of citizens and organizations to seize the courts to defend both their public and private interests; to fight all customs and practices which lead to facilitating or justifying the interference in the judiciary; to fight all customs and practices which lead to weakening or undermining or dividing judges; to stand in solidarity with any judges' movement aiming at strengthening judicial independence and transparency; to support the judges' freedom of association and of expression, with due consideration to the principles of neutrality and independence; to work on strengthening ties between judicial professions; to seek the implementation of evaluation mechanisms for the work of tribunals; to seek accountability for any disruption of judicial work, based on objective standards and by independent bodies.

The "civil coalition for judicial independence and transparency" includes the following bodies and organizations: LADE, Beirut Madinati, KAFA, Alef, Restart, AJEM, Frontiers Rights, Legal Agenda, Kulluna Irada, Committee of the Families of Kidnapped and Disappeared, LPHU, RDFL, Lebanese Labour Watch (Marsad), FENASOL, Public Works Studio, Insan, Nahnoo, Skoun, Green Line, Umam, ANND, Badael, Massar, Consumer Protection Organization, CRTDA, SMEX, Helem, Sakker el Dekkene, Maharat News, MARCH, Fe-Male, Offre Joie.

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