

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	645
Land:	Libanon
Kilde:	Konrad Adenauer Stiftung
Titel:	Lebanon's Administrative Judiciary and its Implication on the Country's Rule of Law
Udgivet:	April 2020
Optaget på baggrundsmaterialet:	3. september 2020

April 2020

country report

Rule of Law Programme Middle East / North Africa

**KONRAD
ADENAUER
STIFTUNG**



Lebanon's Administrative Judiciary and its Implication on the Country's Rule of Law

*Isabel Henzler Carrascal
Sandy Haddad*

What is administrative jurisdiction and why is it important for a country?

Countries in the MENA region currently lack thorough and stable administrative judiciary systems, which in turn reinforces the people's lack of confidence towards it. Hence, a wave of recent reforms and changes within the administrative judiciary has appeared in order to implement and ensure the proper application of justice, as well as to increase and enhance the effective access to it.

In light of the mass protests of October 17th and the subsequent months of civil unrest in Lebanon, which led to the resignation of Saad Hariri and his government, the independence of the judiciary arose as one of the main claims among the protest movement. Protesters, as well as certain political parties and observers alike, stressed the need for the judiciary system to be free of corruption in order to guarantee access to justice for civil society. The said activism called for a better overview of the current administrative judiciary system, and

a closer insight on the changes that a new draft law provides in order to get a better understanding on the reforms of the administrative judiciary, given the context of ongoing civil unrest.

Administrative law is the branch of public law that governs the activities of administrative governmental agencies. Therefore, administrative courts are primarily responsible for disputes concerning the exercise of official authority by ruling the relationship between public authorities and the citizenry. Administrative Jurisdiction is the extent, power or territory in which an office with executive or managerial authority administers justice or declares judgments.

Depending on the legal system of every country, systems of the administrative judiciary can vary. However, there are main cornerstones that every administrative jurisdiction should entail in order to enforce and guarantee the rule of law and democratic governance within the country. Accountability and transparency in public administration is one of those cornerstones. That is why a well-functioning administrative jurisdiction is necessary in order to stabilize it.

According to the international commission of jurists, the administrative judiciary should allow private persons to effectively challenge administrative acts and decisions, hold public authorities accountable for breaches of law and infringements of human rights. As well as to guarantee the independence of the judiciary by ensuring certain elements within the careers of administrative judges such as selection, appointment, tenure, discipline, access to court for citizens and fair trial in administrative proceedings.

Overview of the Administrative Judiciary in Lebanon

The Lebanese judicial system is divided horizontally into four main court systems, each having a multilevel hierarchical structure. The systems are:

- The Judicial court system known as kadaa'dli
 - The administrative court system known as Majlis al-Shura
 - The military court system, and
 - The religious court system
- i. Historical development

The Lebanese Judiciary has been influenced by various entities throughout history. As the Lebanese Republic was a part of the Ottoman Empire for about four hundred years, an Ottoman system was in place which divided the local judiciary system into three courts: one for Muslims, one for non-Muslims, and a "trade court". In 1926, Lebanon became a parliamentary democratic republic governed in accordance to a written constitution, and at the end of World War I and the fall of the Ottoman Empire, it became a separate political entity under French mandate. The country gained full independence in 1943, at which time it adopted a power sharing mechanism based on religious communities.

Therefore, the Lebanese administrative judiciary system finds its origins prior to the existence of the Lebanese constitution. It was established by virtue of a decision issued by the High Commissioner under number 2668, dated 16 September 1924.

The system is in large part inspired by its French counterpart. It is headed by the state council which was established by Law No. 10434 of 14 June 1975 (Statute of the State Council) and was amended several times, notably in 1980, 1993 and 2000. Although the last amendment of the Statute of the State Council, by Act No. 227 of 31 May 2000 provided the establishment of first level administrative tribunals in each of the six provinces (Mohafazas) of Lebanon, this reform has yet to be implemented, which is why the State council is currently still the only administrative jurisdiction in Lebanon.

ii. Composition

The Lebanese State Council is composed of the State Council Bureau and ten chambers. Headed by a President, it has about 45 judges, including 10 chambers' presidents and 35 counselors.

The State Council Bureau chaired by the President of the State Council is responsible for supervising and monitoring the proper functioning of administrative courts. Besides the President, it is composed of the Government-Commissioner as Vice-President; the President of the Judicial Inspectorate and the Presidents of the Chambers of the State Council (as members), as well as three Presidents of the administrative courts of the highest rank State Council Chambers.

iii. Competencies

The Lebanese State Council has both advisory and judicial competences. It is the Supreme Court in charge of administrative cases, as well as monitoring legislative and organizational texts.

Until today, the Lebanese Ministry of Justice did not adopt the necessary decision to establish the Governorates' first instance administrative courts, in line with article 34 of the Statute of the State Council amended on 31 May 2000. Due to the non-forming of first instances, the Lebanese State Council remains the first and last reference to examine legal reviews related to:

- claims for damages caused by public works, public interests or damages resulting from the administrative functioning of the parliament;
- administrative cases involving contracts, transactions, obligations or administrative privileges conducted by public departments or administrative departments of the parliament to ensure the conduct of public interests;
- personnel and individual disputes concerning the staff of the parliament;
- public property matters;
- cases where administrative authority is vested in civil servants if they commit a mistake, considered a reason to judge them;
- direct and indirect tax and charge cases, contrary to any other general or special provision;
- nullification requests following abuse of authority related to decisions of administrative nature, whether they relate to individuals or to regulations issued by a local public authority (Governor-General, Counselor, etc.);
- disputes concerning the legality of elections of administrative councils, such as municipal councils, voluntary bodies and others;
- disputes relating to discipline of public servants;
- nullification requests following abuse of authority concerning organizational, practical and individual decrees as well regulatory acts issued by Ministers;
- lawsuits of civil servants appointed by virtue of decrees;
- cases regarding individual administrative decisions, which scope of application exceeds regional jurisdiction of one administrative court;
- requests for interpretation or for evaluation of the validity of administrative acts, which are of jurisdiction of the State Council in first instance and final resort;
- cases of dependence.

Challenges and opportunities

The Lebanese administrative judiciary system is facing various challenges, several of them resulting from the absence of a fully institutionalized first and second instance court system and the State Council's dual consultative and jurisdictional competence. Other challenges arise regarding the procedure and the organization of the courts, such as the appointment and transfer of judges, their remuneration, evaluation and disciplinary measures, as well as general issues relating to sectarianism and gender balance.

Further challenges related to time limits for judgment, inadequacies of referrals, power of injunction, periodic penalty payment and obstacles to the enforcement of decisions of the administrative judge in Lebanon were also reported.

Legal actors are currently working on a draft law to consolidate the practical and normative independence of the administrative judiciary in Lebanon and to strengthen the rule of law of the country. In order to stress the equality of both jurisdictions the draft law proposal has been designed in parallelism to the ordinary (civil) judiciary. The independence of the judiciary, which is already enshrined in Article 20 of the Constitution, is the cornerstone of the rule of law. This is why the section on judicial organization of the draft law aims to strengthen the guarantees pertaining to the internal and external independence, as well as the transparency but also proper management of the administrative judiciary system. The draft law foresees for example the publication of court decisions on a dedicated website (including dissenting opinions) to enhance transparency and the right to information. As of now, the State Council is the only reference for administrative matters. Therefore, the necessity of implementing first and second instance courts (Article 2), creating the higher council of administrative judiciary (Article 5), as well as following the model of decentralization by creating administrative courts in the five governorates (Art. 33) is provided within the draft law.

While the present guarantees of the right to a remedy, a fair trial and a prompt and effective justice seem to be insufficient the new draft law proposal revised to guarantee a right to an effective remedy and thus to improve the access to justice. The idea behind the reform proposal is to guarantee a justice of proximity for the benefit of the citizen by, for example, reorganizing the territorial principle according to new criteria as the applicant's domicile or the location of the building at issue. The transmission of requests in the event of incompetence should be automatic, the obligation to be represented by a lawyer should be simplified and the "locus standi" should be expanded, particularly when concerning issues of national importance such as the environment or cases of manifest corruption.

The revised procedural rules furthermore aim to improve the guaranty of a fair trial by implementing two levels of jurisdiction, as well as fostering transparency in the formation of judgement – as stated above – but also by providing the possibility for oral hearings and reorganizing the investigation procedure in order to restore equal balance between the administrative judiciary and the administration. Furthermore, the procedural rules aim to enhance the efficiency of the administrative judiciary by completing the system of referrals by the suspension referee and the freedom referee following the French system.

KAS initiative and provision

The KAS MENA Rule of Law Programme, in cooperation with Legal Agenda,¹ organized a series of workshops to analyze and discuss reform proposals that give impetus to the

¹ Lebanese non-government, non-profit organization that aims to lift the barriers between the law and society. www.legal-agenda.com

development of the administrative judiciary system in Lebanon. The workshops aimed to have an explanatory memorandum and a draft law organizing the administrative judiciary, and alternatively to achieve a comprehensive reform package that will enhance the independence, impartiality and access to the administrative court system in Lebanon. This initiative offered a forum for expert discussions at the highest peer-to-peer level on cross-cutting themes relating to the systematic and practical challenges of the administrative judiciary.

Nevertheless, elaborating a draft law and implementing it any further faces various challenges, as many elements must be taken into consideration. If one takes the example of the appointment of judges, the aim should be to develop the draft law in such a way where judges would be appointed objectively in order to achieve legal certainty within the judiciary. To this end, the qualifications of the judges should be the priority. However, several factors must be taken into consideration. If one takes a closer look at the Lebanese judicial and political system, religious affiliation plays a huge role. There are 18 different confessions in Lebanon and each hold differing aspects of political power. In order to achieve a balance between those 18 different confessions, the competence of the judges cannot be the only decisive criterion.

The efforts of KAS and other aligned initiatives have helped overcome some of the obstacles mentioned above. The experience with similar reforms in Tunisia, in addition to a different perspective from Germany, has helped obtain a better oversight on how to reform the Lebanese administrative judiciary system.

The aforementioned draft law proposal is a first step towards meeting one of the various demands of the protest movement. By reforming laws related to the appointment of judges, therefore reducing corruption within the judiciary as well as implementing demands guaranteeing access to the judiciary, the gap between the Lebanese society and the judiciary will begin to shrink. As the international committee of jurists stated, "the reforms should seek to reflect the diversity of the Lebanese society." The next phase would centre on advocacy and include lobbying for the draft law to be introduced in a legislative session. This will be considered as a significant first step towards a more equitable, objective and accessible administrative judiciary.

Authors:

Isabel Henzler Carrascal, Guest Researcher at the Rule of Law Programme Middle East / North Africa

Sandy Haddad, Project Manager at the Rule of Law Programme Middle East / North Africa

Konrad-Adenauer-Stiftung e. V.

Dr. Malte Gaier

(Ad interim) Director Rule of Law Programme Middle East / North Africa

www.kas.de/rspno/eng

info.mena@kas.de



The text of this publication is published under a Creative Commons license: "Creative Commons Attribution- Share Alike 4.0 international" (CC BY-SA 4.0), <https://creativecommons.org/licenses/by-sa/4.0/legalcode>