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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

LEBANON

DRAFT LAW

ON THE SUPREME JUDICIAL COUNCIL

Summary prepared by the Secretariat¹

¹ Note: This summary prepared by the Secretariat is not binding on any future positions of the Venice Commission

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I. Introduction

Draft law on the independence of the judiciary in Lebanon: executive summary of the main provisions and architecture of the system

This law organizes the judiciary in Lebanon and consists of 7 parts:

- 1-The Supreme Judicial Council
- 2-Judicial organisation
- 3-Judicial judges
- 4-Institute of Judicial Studies
- 5-Judicial inspection
- 6- Judicial evaluation
- 7-Judicial assistants

II. The Supreme Judicial Council

A. Functions of the Supreme Judicial Council

The Supreme Judicial Council shall ensure the proper functioning of the judiciary, its independence and the proper functioning of the courts and shall take the necessary decisions in this regard.

B. Members of the Supreme Judicial Council

The Supreme Judicial Council is composed of 10 members:

1. Members by right

- First President of the Court of Cassation, President
 - Public Prosecutor at the Court of Cassation, Vice-President
 - Chairman of the Judicial Inspection Commission, Member
- For a non-renewable term of four years.

2. Elected members

- Full (or statutory) judge from among the presidents of chambers of the Court of Cassation.
- Full (or statutory) judge from among the councillors at the Court of Cassation.
- Full (or statutory) judge from among the presidents of chambers of the courts of appeal.
- Full (or statutory) judge from among the councillors of the courts of appeal.
- Full (or statutory) judge among the investigating judges.
- Full (or statutory) judge from among the presidents of chambers of the courts of first instance.
- Full (or statutory) judge among the judges on mission and single judges.

3. Elections and calls for candidates

This part organises the conditions and deadlines for applications.

The candidate may appeal against the rejection of his/her candidature before the General Assembly of the Court of Cassation within five days from the date of the announcement. The application is considered accepted if the appeal is not decided within seven days.

Members are elected for a period of 3 years, not renewable.

The term of office of the members of the Supreme Judicial Council shall end in the event of death, resignation, retirement or a final disciplinary sanction, with the exception of a warning or reprimand. As regards the ex officio members, if one of the mandates expires and if no decision is taken to appoint a new member within a period of 2 months, the judge with the highest rank among the presidents of the chambers of cassation may replace the President of the Supreme Judicial Council on a provisional basis until a replacement is appointed.

The same applies to the Vice-President of the Council and the President of the Judicial Inspection Commission

The Secretariat is taken over full time by the youngest member, who does not exercise any other function.

C. Obligations of the members of the Supreme Judicial Council

Members of the Council cannot be transferred from one centre to another during their term of office, nor can their immediate family members.

A member of the Council may not, even after the expiry of his or her term of office, stand for election to the presidency, parliament or municipal government, or be appointed as a minister or member of the Constitutional Court or to any high office only after a period corresponding to his or her term of office in the Council.

Bank secrecy is lifted in favour of the National Anti-Corruption Commission and the Judicial Inspection Commission with regard to Council members, their spouses and minor children.

D. Powers of the Supreme Judicial Council

- The Council is responsible for guaranteeing the moral and material rights of judges, their independence, training, transfer and discipline.

- Review of the judges' collective claims.

- Review of complaints

Any person may lodge a complaint with the Supreme Judicial Council, provided that it relates to the functioning of the public service of justice, the conduct of the judge or the independence of the judiciary. This article states that there can be no encroachment on the remit of other judicial or disciplinary bodies or that the complaint cannot concern a case that is being examined by the courts or has already been judged or is under the jurisdiction of the judicial inspectorate.

- Code of ethics for judges

Drafted by the Supreme Judicial Council in collaboration with the judicial inspection and evaluation bodies and the Institute of Judicial Studies.

-Power to propose and issue opinions

Recommendation to the Minister of Justice of any legislative or regulatory reform to ensure the proper functioning of the public service of justice and its independence.

Opinions on bills and proposals relating to the organisation and management of justice, the competences of the courts, their procedures, the statutes of judges and court assistants and laws regulating forensic doctors, notaries, bankruptcy agents and sworn experts.

-Opinion on the training programmes for trainee judges at the Institute for Judicial Studies and on the continuing education programmes for judges.

-Opinion on the draft budget of the judicial courts submitted by the Ministry of Justice.

-Preparation of an annual report on justice.

-Participation of judges in the Council's decisions, via the General Assembly of Magistrates at the beginning of each judicial year.

E. Rules of Procedure of the Council

The rules of procedure of the Council must be promulgated within 6 months of the establishment of the Council, after the Shura Council has given its opinion.

F. Council meetings and decisions

This article deals with the modalities for convening the Council as well as its presidency in case the President is unable to attend. A quorum of 2/3 is required, which increases to half in the event of a second call. Decisions shall be taken by a majority of votes of those present, with the President having the casting vote. Each member may request that his or her contrary opinion be recorded. In any case, and whatever the number of persons present, decisions cannot be taken with less than 5 votes.

G. The Council's budget

The Council's budget is allocated within the budget of the Ministry of Justice.

H. Appeal of Council decisions

-For individual decisions

-Before the General Assembly of the Court of Cassation

Non-suspensive appeal, except for a stay of execution, within a maximum period of 2 months.

III. The judicial system

A. The courts

The courts of justice include :

-Courts of first instance.

- Courts of Appeal.

-Court of Cassation.

-As well as specialised courts established by law, composed of judges or with the participation of a judge.

It is specified that the courts of first instance, the courts of appeal and the Court of Cassation may hold their hearings away from their premises, by decision of the Minister of Justice taken on the proposal of the Supreme Judicial Council.

B. Courts of Appeal

In each court of appeal there is a first president and chambers.

The First President of the Court of Appeal ensures the proper functioning of the Chambers and their independence. He may delegate his powers to a president of a chamber, provided that this does not exceed one month.

The bill provides for a public prosecutor of the court of appeal and the first investigating judge and their respective roles.

It also deals with the allocation of cases to magistrates, vacancies and the annual activity report

C. The Court of Cassation

The first president of the Court of Cassation is responsible for the administration of the court, assisted by a secretary general appointed by the Minister of Justice on the proposal of the Supreme Judicial Council. He ensures the proper functioning of the chambers and their independence.

The public prosecutor of the Court of Cassation.

The First President of the Court of Cassation chairs the general assembly of the Court. He is also the President of the Supreme Judicial Council.

D. The Judicial Chambers

E. Tables of judicial organisation or organigrams

-Judges seconded to the Ministry of Justice

-Judges seconded to specialised courts

The modification of this organisation chart is done by decision of the Minister of Justice, after approval of the Supreme Judicial Council.

As for the abolition or creation of courts, they are carried out by decree of the Council of Ministers at the request of the Minister of Justice and after approval by the Supreme Judicial Council.

F. Judicial judges

They are subject to the principle of judicial independence.

In order to guarantee this independence, judges enjoy all the rights and freedoms enshrined in the Constitution and applicable laws on an equal footing with all citizens, and these rights and freedoms are limited only by what is required by the independence of the judiciary.

Judges may only be appointed, transferred, evaluated, sanctioned or removed from office in accordance with the provisions of this Act.

The State guarantees them compensation for any damage caused to them or to a member of their family in the performance of their duties.

G. Trainee judges

Trainee judges shall be appointed to the Institute of Judicial Studies from among those who have passed a competition organised in accordance with the procedures specified in this bill.

The Minister of Justice, after consultation with the Supreme Judicial Council and the Shura Council and the Ministry of Finance(?), shall determine the needs each year and announce the date of the competition and the conditions of access.

They are subject to the same disciplinary conditions as the regular judges.

The trainee judge is promoted by one grade after passing each academic year at the Institute. They are appointed as full judges by a decree issued on the proposal of the Minister of Justice.

H. Statutory or titular judges

This part deals with the conditions of appointment of statutory or full judges.

In addition to the criteria provided for in Article 59, it remains possible to appoint magistrates from outside the Institute of Judicial Studies by the Council of Ministers, on the proposal of the Minister of Justice and after approval by the Supreme Judicial Council, on the basis of a test conducted by the Institute of Judicial Studies. The bill sets out the conditions for applications.

Statutory judges shall take an oath. A special file shall be created for each judge, a copy of which shall be deposited with the General Secretariat of the Supreme Judicial Council.

No reference to the judge's political opinions or social, religious or philosophical activities may be included in the file.

Every judge has the right to inspect his or her private file and the documents it contains.

I. Court compositions and transfers of magistrates within the judicial centres

The Supreme Judicial Council draws up plans for the composition of courts, the transfer and distribution of judicial work and submits them to the Minister of Justice. In the event of a difference of opinion, the Minister convenes a meeting with the Council. If the differences persist, the Council meets again and takes its decision by a majority of 7 votes and submits it again to the Minister of Justice. Its decision will then be final and binding.

The judge may only be removed from office in accordance with the provisions of this bill. The judge may not be transferred without his or her consent, even in the case of promotion, except in the case of a disciplinary sanction other than a warning or reprimand.

With the exception of the presidents of the chambers of the Court of Cassation and the first presidents of the courts of appeal, a judge may only hold office for a fixed period. The bill specifies the duration for each type of judicial office.

The Supreme Judicial Council announces the course of the judicial compositions at the end of the judicial year. Each judge, within two weeks from the date of the announcement, may inform the secretariat of the Council of his or her preferences.

The Supreme Judicial Council conducts interviews to select from among the judges applying for each position.

No judge shall communicate with any member of the Supreme Judicial Council, directly or indirectly, in matters of composition, under penalty of disciplinary proceedings.

One article is devoted to "judges on mission". 5% of judicial posts are devoted to them. The "judges on mission" do not occupy a specific judicial post and the Supreme Judicial Council may assign them to any task corresponding to their qualifications and diplomas. The existence of "judges on mission" is intended to fill all judicial vacancies.

The compositions of the courts are made on objective bases that derive from the judicial centre, and the most suitable judge is chosen.

All judges are subject to periodic evaluation every two years through the Judicial Evaluation Commission. Each judge has an evaluation file to which he or she has a right of access.

In selecting the most appropriate judge for each position, the following criteria should be adopted:

- Ethics
- Scientific, judicial and personal competence
- Performance
- Seniority
- The presence

The bill specifies the grades eligible for appointment by function and the necessary seniority.

A rotation within regions is also foreseen: a judge can only be appointed in the same governorate after having been appointed in four different governorates.

In order to encourage work in the regions, a removal allowance is set by decree.

The draft prohibits the exercise of other jobs or professions, with the exception of teaching and scientific research.

Furthermore, a judge may not stand for parliament, nor be a candidate for the Constitutional Council, nor hold a ministerial portfolio, until two years have elapsed from the date of leaving the judiciary.

Teaching may not exceed 3 hours/week, after approval by the Supreme Judicial Council. The judge is free to publish scientific studies, books and articles.

The judicial judge may be seconded to the Presidency of the Republic and the Council of Ministers and the High Disciplinary Commission for a non-renewable period of two years.

Judges may create and join professional associations and belong to other established associations, provided that this does not conflict with the powers of the Supreme Judicial Council or with the code of judicial ethics or with the principle of judicial independence.

They have the right to create judicial professional associations for the purpose of establishing various scientific and cultural activities and developing expertise.

Any breach of the professional obligations of magistrates and any act that violates their honour, dignity or morals constitutes professional misconduct. Failure to attend court hearings, failure to deliver judgments on time, discrimination between litigants or failure to respect professional secrecy are considered breaches of professional obligations.

The bill sets out the composition of the Disciplinary Board, which is referred to by the Judicial Inspection Commission. The procedures (notification, investigation) and time limits followed by the Council are also specified. The accused person may be assisted by a lawyer.

The decision of the Disciplinary Board shall be reasoned.

The bill sets out a list of disciplinary sanctions ranging from a warning to dismissal without pension rights.

The appeal against the decision of the Disciplinary Board is made to the High Judicial Disciplinary Commission, composed of the President of the Supreme Judicial Council and four members.

A judge who did not attend the meeting of the Disciplinary Board may lodge an objection before the Disciplinary Board.

A judge referred to the Disciplinary Board is administratively suspended from office by the Minister of Justice, on the proposal of the Judicial Inspection Commission. If the Minister does not take a suspension decision, the Supreme Judicial Council may issue an administrative suspension decision at the request of the Inspection Commission, after hearing the judge.

The suspension decision may not exceed 6 months, renewable once by a reasoned decision. A judge suspended from his duties shall receive half his salary and allowances.

In the event of the cancellation of a disciplinary procedure or an acquittal, the outstanding salaries are returned to the person concerned.

Apart from any disciplinary or criminal proceedings, the Supreme Judicial Council may decide, by a reasoned decision and with a majority of 7 votes, on the incompetence of a judge, or at the request of the Inspection Commission, after having heard the judge. This decision may be appealed to the General Assembly of the Court of Cassation.

The bill provides that the dress (robe?) of the magistrate shall be fixed by decision of the Minister of Justice, on the proposal of the Supreme Judicial Council.

The duration of judicial holidays is one and a half months for all magistrates.

IV. The Institute of Judicial Studies

The bill sets out the remit of the Institute of Judicial Studies, its organisation and its various departments, its administration, its management and its Council chaired by the President of the Supreme Judicial Council, and distributes the powers devolved to each of these bodies. It states that the Institute's budget is part of the Ministry's budget.

V. The judicial inspection

The draft defines the Judicial Inspectorate as an independent body in its work, under the supervision of the Minister of Justice. It specifies its powers, such as monitoring the proper functioning of the judiciary and the work of judges, court clerks and all other persons subject to its control, its disciplinary powers and its role in proposing to the authorities concerned any measure likely to improve judicial work.

The draft law defines the scope of the Judicial Inspectorate, which covers, among others, judicial and administrative magistrates, auditors of the Audit Office and the Registry.

The Judicial Inspection Commission is composed of a President and 8 Judicial Inspectors General, Judicial Inspectors and a Council.

The President of the Judicial Inspection Commission is assisted by judges representing 3% of the permanent judges. The President is appointed by decision of the Council of Ministers from among the senior judicial judges for a non-renewable term of 4 years.

The members of the Judicial Inspection Commission are sworn in before the Head of State, in the presence of the Minister of Justice.

During their term of office, the President and the members of the Commission may not be transferred, even for promotion, except at their express request. They are subject to the statute of judicial judges. The President of the Commission receives an allowance of 30% on top of his salary. The members receive a 20% allowance.

The bill sets out the competences of the President of the Commission, such as the execution of the annual judicial inspection programme, the opening of an investigation into the incapacity of a judge, the monitoring of disciplinary proceedings, the imposition of first degree sanctions, etc.

It shall also lay down the modalities of the investigation, the confidentiality and the procedures to be followed as well as the material and human resources. The Council of the Inspection Commission shall establish its rules of procedure and any amendments thereto. These rules become binding after approval by the Minister of Justice. All persons are obliged, on pain of imprisonment and a fine, to answer to the Commission and not to obstruct its work.

VI. Judicial evaluation

It is done by an independent Commission under the aegis of the Supreme Judicial Council. It is composed of a president chosen from among the high-level judicial judges and 8 members (7 high-level judges and one judge from the Shura Council). The members are appointed by decree on the proposal of the Minister of Justice, after the opinion of the Supreme Judicial Council and the Shura Council, for a term of 3 years renewable once.

The Evaluation Commission carries out regular visits to evaluate the work in the courts, administrations and issues recommendations to improve the efficiency of justice, bringing any shortcomings to the attention of the relevant authorities. A scientific committee is responsible for the evaluation of the weighting of cases and the elaboration of the annual plan for the distribution of cases to magistrates. The number per magistrate distributed by the presidents of the courts may not exceed the agreed figure.

The project sets out the judicial evaluation process, based on an impartial and objective evaluation tool and integrated performance standards. The evaluation criteria are for example independence, integrity, impartiality, personality of the judge, performance, attendance, competence, scientific research activities and publications.

VII. Judicial assistants

The last part of the bill is devoted to judicial assistants, including clerks, secretarial and administrative staff. The bill explains their respective roles, selection procedures and competitions, required diplomas, transfer procedures and allowances, discipline, status and allowances.

VIII. Final provisions

The civil service statute shall apply to judges insofar as it is not incompatible with the provisions of this Act or with the principles of judicial independence.

Provision is made for the end of the term of office of the current Council. For ex officio members, the term of office shall be counted from the publication of this Act. For other members, this Act shall apply immediately.

Provisions contrary to this law, in particular Decree 83/150 of 16 September 1983, are repealed.